

no zamindari tahsildar, after the preceding section becomes law, would care to risk a punishment for criminal trespass in order to do a small turn for his employer; so I do not believe this section is necessary to prevent illegal distraint. Under these circumstances, I beg Government to omit this new section altogether.

18. *Section 207.*—I object to this section, because, if it becomes law, I believe it will very probably increase litigation to an alarming extent, and thereby injure both the landlords and the tenants. Opportunities have already been given in the proceedings for the adjustment of rents in the ordinary way, and in section 151, sub-section (2), clause (a) of this Bill, for the determination of this question; and I cannot see any necessity for the tenant to get his status determined, except when an enhancement-suit has been instituted against him by his landlord. Besides, a very large number of pattas and kabuliyaats have been executed within the last few years, and the number is daily increasing, as a return from the registration-offices will show; so I am sure the tenants cannot possibly be injured by the omission of the sub-chapter (C) of Chapter XIV.

19. *Section 208, sub-section (1), clause (c).*—I admit that the hardship would be very great if the holder of a tenure mentioned in this clause be made liable to ejection when his landlord is sold up for arrears of rent; but, unless the legislature provide in such cases for an enhancement of rent of the lands comprising the tenure, the superior landlord's interest cannot be protected; because otherwise there will be no check upon the creation of incumbrances such as is mentioned in this clause. As long, therefore, as Government would not make a provision, such as I have mentioned above, for the protection of the rights and interests of the superior landlords in these cases, I must humbly protest against this clause.

No 822T-R, dated the 15th September, 1883.

From—C. W. BOLTON, Esq., Under Secretary to the Government of Bengal,

To—The Secretary to the Government of India, Legislative Department.

In continuation of my letter No. 686T-R., dated 3rd September 1883, I am directed to submit, for the information of His Excellency the Governor General in Council, the accompanying copies of papers\* received from the British Indian Association on the subject of the Bengal Tenancy Bill, 1883.

\* Letter No. 92, dated the 17th August 1883, with enclosures.

No. 92, dated Calcutta, the 17th August, 1883.

From—The Hon'ble KRISTODAS PAL, C.I.E., Secy. to the British Indian Association.

To—The Under-Secy to the Government of Bengal, Revenue Department.

I have the honour, by desire of the Committee of the British Indian Association, to acknowledge the receipt of your letter No. 967A.—366L.R., dated 21st July last, calling attention to Mr. Under-Secretary Bayley's letter No. 967—366L.R., dated 19th March last, inviting the opinion of the Association on the provisions of the Bengal Tenancy Bill.

2. In reply, I am desired to state that on receipt of Mr. Bayley's letter, the Association invited a meeting of the Central Committee of Landholders appointed by it to consider it, and to report upon the Bill. The Central Committee issued a circular in English and Bengali (copies hereto annexed) to zamindars and others interested in land, inviting answers to questions therein set forth.

3. The Central Committee have not yet received answers from all those whom they have addressed on the subject, and considering the vast magnitude of the interests involved, the Association solicit permission of His Honour the Lieutenant-Governor to defer their report upon the Bill till a fair representation of the views of the different districts upon it is received.

4. In the meantime the Central Committee have addressed a petition to both Houses of Parliament, setting forth their objections to the leading principles of the Bill, to which the Association fully subscribe. A copy of the petition is herewith submitted for the information and consideration of His Honour the Lieutenant-Governor and the Government of India.

5. The Central Committee have appointed a Sub-Committee of their body to consider the detailed provisions of the Bill; the Sub-Committee have submitted their report with notes containing their opinion on the provisions of the Bill. Not to lose time, I forward a copy of the notes for submission to His Honour the Lieutenant-Governor. These notes I request may not be accepted as the final conclusions of the Association, which will be communicated to you when the Central Committee will come to a decision on the subject.

6. I have stated above that the Central Committee have not yet received answers to their circular from all those to whom they have addressed it. The Association fear that the agitation of the public mind with other matters has diverted attention from the Bengal Tenancy Bill, and that hence the delay complained of. The Association would therefore solicit that His Honour the Lieutenant-Governor would be pleased to recommend to His Excellency the Viceroy and Governor General in Council to defer the consideration of the Bill till the public are relieved of these other matters, so as to be able to give undivided attention to this momentous subject.

*Circular issued by the Central Committee of the British Indian Association to zamindars and others, dated the 15th May 1883.*

Dear Sir—With reference to the Bengal Tenancy Bill introduced into the Governor-General's Council for making Laws and Regulations, I have the honour, by desire of the Central

Committee of Landholders of Bengal and Behar, to invite your opinion on the provisions of the Bill and on the following questions in connection therewith.

1. Have you got measurement papers of all your estates and taluks, showing the areas of all khamar lands in all your villages?

2. Would there be any practical difficulty to the area of khamar lands being fixed for ever after enquiry and reckoning all other lands as ryoti lands as the Bill proposes to do (section 6), and do you approve of the principle of this section?

3. Are you aware of lasting distinction being observed in the lands of any village in your estate, denoting that certain plots or tracts are permanently appropriated to the exclusive use of all or any class of ryots in the village, and that certain other tracts, whether occupied or not by ryots, are similarly reserved as the zamindar's khamar?

4. Having regard to lands which are currently called ryoti and khamar, are you aware of any custom, usage, or tradition which disentitles the zamindar to convert into khamar any unoccupied ryoti land or entitles any ryot to claim the lease of lands left vacant by any of his fellow-ryots? Have you ever known of any such claim being set up or any allowance being made by the zamindar in satisfaction of such claim?

5. Do you hold any land which is specifically appropriated as the zamindar's malikhana or moshaira? And have you not—if at all—always enjoyed the malikhana as an allowance upon the aggregate rental of estate?

6. Do you as zamindar ever claim any higher proprietary right in respect of unoccupied khamar than in respect of unoccupied ryoti land?

7. What has been in your district the effect of the rule of 20 years' presumption in suits for enhancement of rent? How will it be modified by the change which the Bill proposes to introduce by allowing uniform payment of rent to be proved for any period of 20 years (sections 15 and 20)?

8. In the case of tenures held since the Permanent Settlement, but not at a fixed rent, the Bill requires the landholders' "right to enhance" to be proved in every suit for enhancement of rent (section 18). How would you prove such a right?

9. Section 21 provides that the rent of a tenure may be enhanced up to the limit of the customary rate, but if such rate cannot be determined the rent may be enhanced so as to leave the ryoti tenure-holder a profit of from 10 to 30 per cent. on his gross rents *minus* the costs of collection. How would such a rule operate in your district?

10. The Bill proposes to make all tenures, the rents of which are fixed, saleable and hereditably like other immovable property (section 25). The provision contained in section 51, which gives the landholder a right of pre-emption, does not apply to such tenures. Is the proposal liable to any objection?

11. Consider the sections from 27 to 35, and say whether these would make adequate provisions for the registry of transfers of ryoti holdings by succession, sale, gift, and otherwise?

12. How would the rule for acquiring right of occupancy contained in section 45 operate in your district and affect your rights?

13. Section 46 provides that, unless a ryot has ceased by desertion or otherwise, to hold for at least one year his right to the land shall not cease. How would such a rule affect your interests?

Consider the case of two applicants for such land, one offering a certain bonus on condition the rent-rate is the one hitherto prevalent and the other offering no bonus, but in its stead an increment over the prevailing rate. Call the first as one of class A and the second of Class B.

Does it not often happen that the offer of B is more profitable to you than that of A? And does it always happen that the offer of B is suicidal to his own interest?

Do you not think that the zemindars and ryots will both suffer in the long run by discouraging or prohibiting offers like that of B?

What do you think will be the ultimate condition of people in the circumstances of B? Do you not think that the provisions in the Bill will for ever prevent B from growing into the circumstances of A, and that the former will eventually have to work as day-labourers under A?

14. The Bill allows right of occupancy to grow in respect of khamar lands unless the contrary is provided by written agreement (section 48). Is this objectionable?

15. The Bill prohibits ryoti land being ever placed at the disposal of the zemindar so that it might at his option be let out to tenants-at-will, or at rates agreed to by the applicant, but above the limits prescribed by law. Is such restriction consistent with any custom or usage that you know of? Is it safe for the adequate realization of dues and of the Government revenues?

16. Would the right of pre-emption given to landholders by sections 51 and 53 remove the objections to the saleability of all occupancy holdings?

17. Section 56 provides that when the land of occupancy ryots comes to the khas possession of the landholder, the person to whom such land is let will get it with a right of occupancy. Do you think this objectionable; and if so on what grounds?

18. Section 59 provides that the rent of occupancy ryot (not even that of land which has come to the khas possession of the landholder) (section 61) shall not be enhanced unless by a written contract approved of by a revenue officer, who shall see that the amount of additional rent is not more than 6 annas in the rupee, and that the enhanced rent is not greater than one-tenth of the annual value of the gross produce of the land. Do you think this limitation on the freedom of contract necessary or desirable?



19. Do you see any objection to the rates of rent being determined by the executive, instead of by the judicial authorities, as provided in Chapter VI? Do you think the principles on which tables of rates are directed to be prepared just and reasonable, and do you think the procedure suggested will remove practical difficulties in the way of enhancement of rent?

20. Section 81 restricts the landholder's share of the produce in all cases where rent is paid in kind to one-half. Would this rule operate to reduce existing rents?

21. Would the rule as to instalments of rent provided in section 97 check litigation on the point and simplify the decision of rent suits?

22. Section 119 limits the rent in any case to five-sixteenths of the value of the produce. Is there any objection to the proposed restriction?

23. Consider the provisions regarding distraint contained in section 166, and say whether they would serve the purposes of the existing law on the subject?

24. The Bill proposes to allow no appeals in suits for arrears of rent and some other suits of which the value does not exceed Rs. 50. Is this desirable?

25. What remarks have you to offer on the provisions of chapter VIII regarding ordinary ryots and compensation for improvements, and also for disturbance?

26. Is transferability of occupancy tenures recognized in your estates or district; if it is recognized, does it require the consent of the landlord?

27. Do you consider the present procedure for the recovery of rent dilatory and inconvenient? If so, what modification would you suggest?

28. Do you hold that the same law for the settlement and realization of rent should apply to Government and private estates? If so, what are your reasons?

A copy of the Bengali translation of the Bill is forwarded herewith for ready reference. The Committee will feel obliged if you will favour them with your opinion by the 15th day of June next.

Your faithfully,  
KRISTODAS PAL,  
*Secretary.*

BRITISH INDIAN ASSOCIATION ROOMS;  
No. 18, British Indian Street,  
The 15th May, 1883.

*To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.*

The Petition of the undersigned Members of the Central Committee of Landholders of Bengal and Behar, meeting in Calcutta, on behalf of themselves and of their fellow landholders in the Bengal Provinces in British India,

HUMBLY SHeweth,—That Your Petitioners are filled with great anxiety, apprehension, and alarm at the introduction into the Council of His Excellency the Viceroy and Governor General for making Laws and Regulations of a Bill entitled the Bengal Tenancy Bill, the manifest tendency of which seems to be to revolutionise the present relations between landlord and tenant in the provinces of Bengal and Behar, to redistribute landed property on a new and inequitable basis, and to fetter the freedom of action of all classes interested in agriculture by driving them at almost every step of their mutual transactions to Courts of Law and fiscal officers, and foster dispute, litigation, and animosities in lieu of peace, harmony, and good-will among them.

2 That Your Petitioners do not wish to trouble Your Honourable House with the history of that solemn covenant of the State, entitled the permanent settlement, which the late Honourable East India Company, with the sanction of the Imperial Parliament and the Crown, concluded with the zemindars as "actual proprietors of the soil," under which the Government transferred its rights in the land to the said proprietors in consideration of revenue assessed at 1/3rds of the gross rental and fixed in perpetuity, nor with an account of the advantages—financial, economic, social, material and political—which both the State and the people have derived from the operation of that settlement for the last ninety years.

3. That, in consequence of the exorbitant assessment of the revenue under the permanent settlement, no vestiges of most of the old zemindars with whom the covenant was made now exist; the land has been divided and sub-divided and purchased at the full market value by capitalists as a legitimate investment of capital in thorough good faith and in perfect reliance upon the guarantees of rights and interests given by the permanent settlement regulations.

4. That, until 1859, those guarantees had always been maintained inviolate, but in that year a law Act (X of 1859) was passed conferring new rights upon tenants under arbitrary and fanciful rules of prescription, and seriously clogging the rights of the landlord with regard to tenancy and settlement of rent, and imposing grave difficulties in the way of recovery of rent.

5. That although Act X of 1859 is a direct infringement of the permanent settlement regulations, still it has been in operation for nearly a quarter of a century, and rights have grown up under it, which cannot now be fairly or equitably abrogated. Under it a large majority of the tenants have acquired rights of occupancy or fixity of tenure, rack-renting, which had hardly ever prevailed, has been altogether prevented, and even free sale of occupancy holdings has been recognised in some parts of the country with the consent of the landlord. So far Act X of 1859 has fulfilled its great object in improving the position of the tenant and secur-

ing his rights ; but the landlord has not only lost some of his ancient and guaranteed rights, but has also been deprived of the ordinary facility of settling and realizing the rent due to him, though he is burdened with the obligation of paying in the Government revenue by the sunset of the quarter-day, the expiration of which renders his estate liable to peremptory sale for default.

6. That in addition to the payment of the Government revenue, the landlords or zamindars are required under serious penalty to collect from tenants for the Government the road and the public-works' cesses without any remuneration, and to make good all losses that arise from failures in collection on account of default due to bad seasons and other causes not attributable to them ; and that in consideration of this service they were promised by three successive Lieutenant-Governors of Bengal, Sir George Campbell, Sir Richard Temple, and Sir Ashley Eden, a simplified procedure for the recovery of rent. Some Bills had been introduced into the Bengal Legislative Council towards that end ; but they were abandoned with a view to a general revision of the Rent-law.

7. That a Commission, consisting chiefly of Government officers, was subsequently appointed to report on the general revision of the Rent-law, but that Commission, without taking any evidence, or examining the parties interested as to the necessity of the amendment of the law, its direction, extent and scope, submitted an elaborate but extremely one-sided scheme, upon which is primarily based the present Bill. Some provisions of a highly objectionable character have also been introduced into the Bill, which had not been recommended even by the Rent Commission.

8. That one unfortunate incident has practically barred constitutional redress in respect to this Bill as far as the Legislature of this country is concerned. Your petitioners gratefully acknowledge that the fullest opportunity had been given to the public to discuss the original draft of the Bill at its initiatory stage before the Bengal Government, but neither when material alterations and additions were made to it by the Bengal Government, nor when it was finally laid before the Government of India, the public were allowed any such opportunity ; on the contrary, they were positively refused access to it ; and the sanction of the Right Honourable the Secretary of State for India was taken without giving the public or the parties interested the slightest opportunity of knowing or discussing its contents. Under the Indian Constitution Her Majesty's Secretary of State is the highest controlling authority, and all laws passed by the Indian Legislature are liable to be revised and disallowed by him ; but when his permission for a public measure is obtained beforehand, without previous public discussion, practically the public judgment is anticipated and barred. The leading principles of the present Bill having been already sanctioned by Her Majesty's Secretary of State, its formal passage through the Indian Legislative Council will necessarily be a formality, and as the Government has a standing majority in that Council, the aggrieved can hardly hope for a fair hearing in matters which are already matters of foregone conclusion.

9. That the Bill under notice is so voluminous and so comprehensive that it would be tedious to approach Your Honourable House with a detailed criticism on it. Your petitioners would, therefore, crave permission to draw attention to the following summary of the leading principles of the Bill, to the innovations which it proposes to introduce, and to its general policy and tendency :—

I. The Bill proposes to effect a redistribution of land by making an allotment of it in a manner which neither past history nor present facts justify. It declares that all lands, except such as are in the private possession of the landlord in respect of which he may prove 12 years' continuous occupation, shall be regarded, from the date of the introduction of the Bill, as the specific property or portion of the tenant class for habitation and cultivation, along with various incidental rights ; that at the discretion of Government the lands may be surveyed, and demarcated at the expense of both landlord and tenant ; that conflicting claims to such lands shall be the subject of a summary investigation ; and that the landlord, even in case of relinquishment of a tenancy, or of its purchase by him, if he wishes to let it, shall be bound to re-let it to a new tenant at the old rate and conditions, including permanent occupancy right. This is wholly an innovation, and makes a serious encroachment upon the proprietary rights of the landlord. It is in direct antagonism with past history, for when the Permanent Settlement was concluded, it was the land which sought the tenant, and not the tenant who sought the land ; and this was particularly the case in the distribution of waste lands, which had been made over to the landlords or zemindars by way of compensation for the ruinous assessment of the settlement, and the proprietary right from the reclaimed portion of which is now being taken away from them. The land has thus no such characteristic attached to it as now proposed, and the landlord was in no way fettered in the mode of the settlement of his estate. The proposed provision will not only deprive the landlord of his inherent right of re-entering upon land which a tenant may relinquish or which may lapse on the expiration of a lease, but will also give rise to serious dispute, misunderstanding and litigation between landlord and tenant in the establishment of their claims to different classes of lands.

II. At the time of the Permanent Settlement the resident hereditary tenant had fixity of tenure ; custom had recognized that right, but no period had been fixed for the accrual of the right ; by Act X 1850, 12 years' continuous possession was declared to be the basis of occupancy right ; and this provision was allowed retrospective effect ; accordingly a squatter by mere efflux of 12 years' time, acquired a right of occupancy, to the detriment of the rights of the actual proprietors of the soil guaranteed by the Permanent Settlement. This is the interpretation of that law by some of the highest judicial authorities, notably Sir Barnes Peacock,

late Chief Justice of the Bengal High Court, and now a Member of Her Majesty's Privy Council, and Sir Richard Garth, the present Chief Justice of Bengal; but this innovation has been the law of the land for nearly a quarter of a century, and, although it involves gross injustice to your petitioners and the class they represent, they would submit to it as they have hitherto done. By far the largest number of tenants in Bengal have acquired a right of occupancy, and they do not wish to take it away. They, however, submit that it would be the height of injustice if the right of occupancy be further extended in the manner proposed in this Bill. It is now declared that any tenant, if he holds any land in any village or estate for twelve years consecutively, though the land so held by him at different times may have been different, shall be deemed to have become a settled tenant of that village or estate, and to have acquired the right of occupancy, though the last plot, in which the right will accrue, may have been held for a year or even for a day, and may exceed ten times the quantity previously held by him. The right of occupancy is also extended to tenants of the private domains of the landlord, unless there be a lease for a fixed period. Even as regards tenants-at-will, the provisions are so fenced with restrictions by providing compensation for disturbance, that they will virtually become tenants with permanent occupancy right. The extension of the occupancy or tenant right in this arbitrary manner, without any compensation to the landlord, will be a serious encroachment upon his proprietary rights, and will be a deliberate infraction of the guarantees under which he has invested his capital in land. Indeed, it will have practically the effect of redistributing property in land on a new basis.

III. The tenant-right in Bengal, wherever it has existed, has always been heritable, but not transferable. Even Act X of 1859 did not make it transferable. But it has become transferable in some parts of the country with the mutual consent of the landlord and tenant. The growth of this custom, if desirable, may fairly be left to the natural operation of economic laws. But to force it by a legislative enactment would be alike detrimental to the proprietary rights of the landlord and to the material well being of the tenant. The landlord will then cease to be the lord of the soil, which he has inherited or purchased by paying market value for it; he will lose his inherent and just right of choosing his own tenant; although directly liable to the State for revenue under the stern sunset law, by losing his hold upon his tenantry under this process of transfer of tenant-right without his consent, he will be driven to despair in the collection of his rent, and consequently to ruin. On the other hand, the tenant, by acquiring the new freedom of sale, will from excessive Government taxation, adverse seasons, thriftlessness and other causes, find a facility which will inevitably encompass his ruin, as has been the case in some of the temporarily-settled districts of the country where the transferability of the tenant-right is recognized, and where special laws have become necessary for the relief of the distressed agriculturists. Small capitalists, mostly money-lenders, will take the place of the present agriculturists, who will be reduced to mere day-laborers on their expropriated lands.

IV. With a view to counteract the evils to the landlord referred to above, the Bill gives him the right of pre-emption in case of the sale of a tenancy, but under such restrictions as to render it nugatory. In the first place, if the landlord wishes to buy it in, he must pay the full market-value for it; that is to say, he must pay a fine, as it were, for exercising his proprietary right, and if he cannot agree with the tenant as to the price, he must go to court. Even if he purchases it, he will not be allowed the same rights that will be accorded to an ordinary purchaser. After purchasing it if he chooses to let it again, he must re-let it at the old rent to a new-comer, who will *ipso facto* acquire the right of occupancy. An ordinary purchaser will not be bound to accord that right to his sub-tenant. So that a capitalist, who purchases an estate with a certain calculation of return, will get no *quid pro quo* for the sums he will have to lay out again for the purchase of tenancies, simply because the tenant is invested with a new right of transferability of his holding, without of course paying any consideration for it. Supposing that tenants in any large numbers choose to sell their holdings, and that other tenants choose to combine and withhold payment of rent, in order to compel the landlord to their own terms, a contingency by no means unfrequent, ruin will stare him in the face, and if he has not means, he must submit to his fate, however unmerited, through an act of the Legislature, the paramount duty of which is to give equal protection to all classes of Her Majesty's subjects.

V. The determination of rent in Bengal has been generally discretionary. It is true that there was at one time a customary rate in many parts of the country, but the custom was varied so much as by personal, local, and other considerations, that the rate was practically left to the discretion and mutual understanding of the landlord and tenant. This fact has been brought to prominence by the recent enquiries made by Government as to tables of rates prevalent in different districts. When the Permanent Settlement was made in 1793, the rate of rent, it is on record, varied from three-fourths to one-half the value of the gross produce of the land. Until a few years of the enactment of Act X of 1859, there was not much dispute between landlord and tenant about the rate of rent; the rise in the value of agricultural produce led to a demand for increased rent, and in order to bring the question of rent to a satisfactory judicial test, that Act declared that the rent shall be reasonable, fair, and equitable, and provided certain rules for the guidance of the courts. These rules, however, have proved so unworkable that the enhancement of rent through the judicial machinery has practically come to a dead-lock. The gravity of the situation was represented by the landlords to Government, and the Government promised to redress their grievance. That promise is now about to be redeemed by the retrograde step indicated in this Bill. Under this Bill the rent of an occupancy tenant shall not exceed 20 per cent. of the gross value of staple products of the land. In other words, the landlord is practically reduced to one-fifth partner of his own property with his tenant. The rent due to him represents the



shares of the Government and of himself, but this arbitrary limit will necessarily deprive him of all participation in the advantages which the progress of the country will confer upon all other classes of the community, but will always be subject to losses consequent on decadence and reverses. As regards the tenant-at-will, called in the Bill "ordinary ryot," the restrictions are so fenced round that practically there will be no enhancement of rent. In Behar, there are certain tenures called *Bhoul* tenures, analogous to *Melayer* tenures, and with regard to these the Bill actually sanctions reduction of the present rents. Thus the landlord will be practically deprived of the legitimate fruits of his capital, prudence, and good management, the enjoyment of which had been guaranteed to him by the Permanent Settlement.

VI. Contract is the basis of transactions in civilised life, the first step in advance over patriarchal habits, and essential to the success of social and moral progress. The tenant, as an agriculturist or as a member of society, is allowed perfect freedom of contract in all matters affecting him, whatever the difference in the status, intelligence, and influence of the contracting parties; but this Bill declares that he shall not be competent to enter into a contract respecting his tenant-right or the rent payable by him, unless his contract for the latter is approved by a revenue officer to be appointed by Government. This denial of the ordinary rights of a citizen to the tenant was never before known in this country. On the contrary, the Legislature had repeatedly encouraged the interchange of lease between landlord and tenant. The disability imposed upon the landlord for the sake of the fancied security of the tenant is still more arbitrary, unjust and unjustifiable.

VII. The importation of foreign ideas in the regulation of the ordinary relations of life in an oriental country, for which the people are not ripe, can only lead to harm. Never in the history of this country, or at present within the British territories or in the Native States, is the practice of paying compensation to a tenant-at-will for relinquishment of his holding known or recognized. As a rule, the class of tenants called tenant-at-will have not the means of making improvements, and therefore there has never been any question of compensation for disturbance raised. This innovation will not only be a serious interference with the proprietary rights of the landlord, but will plunge both landlord and tenant into deep litigation.

VIII. This Bill will foster litigation between the landlord and tenant at every step of their transactions. The landlord's office will be transferred to the revenue office, and the landlord himself will be reduced to a mere annuitant. Whether the question be classification of land, determination of occupancy right, transferability of a tenancy, the exercise of the right of pre-emption on the part of the landlord, the settlement of rent, the payment of compensation to a tenant-at-will for disturbance, or the realisation of rent, there will be at every step expensive, harassing, and, not unfrequently, demoralizing litigation. There will be no peace, no concord, no harmony, no good-will between two such important members of the community as the landlord and tenant. Such embittered relations between them, as will be the inevitable result of the proposed Bill, cannot be conducive to the true well-being of the State or society.

IX. As regards recovery of rent, the landlord had formerly power to call in the tenant to pay in his rent, failing which he could have him arrested by a simple application to the court, followed by a summary enquiry. He could attach the property of the tenant and sell it after due notice. All suits for arrears of rent were heard before all others by the civil courts, and were finally transferred to the Collector for expedition. Act X of 1859 took away from the landlord the power of calling in his tenant. At first the arrear suit was triable by a revenue officer under summary procedure, but now it has been made a regular civil suit, to be tried at a heavy cost under the regular civil procedure. That result is that ordinarily a rent suit is not disposed of within three months, and not unfrequently many months, and that if the tenants continue to withhold rent, the landlord must either succumb, or let his estate be sold for default. It is observable that this procedure is not applicable to the State in the recovery of its dues as landlord or as guardian of minor landlords. If the State with its vast resources, unequalled influence, and immense prestige, without the terrors of a sunset law for sale of estate in case of default of revenue, deems it necessary to have recourse to a summary law for the realization of rent, how much more necessary is it for the private landlord for a like purpose? Although three successive Lieutenant-Governors of Bengal, as stated above, had promised the landlords the simplification of the procedure for the recovery of rent, still no advance has been made in this Bill in that direction.

X. On the contrary, the Bill practically minimises the only facility which the present law provides for the speedy realization of rent, *viz.*, distraint. The process of distraint is now made at every step a process of court, and by the time the court's order may be obtained the crops may be removed or disposed of, and the landlord's demand thus defeated. As the Bill has been framed, the landlord will, on the one hand, be made to forfeit his ancient, substantial, and valuable rights, but will, on the other, derive no benefit from it.

XI. Nor will the *bonâ fide* cultivator derive material benefit from the Bill. If he holds land under a superior landlord, his rent will be 20 per cent. of the gross produce of the land, but under a subordinate holder it will be 30 per cent. of the same, or 50 per cent. more than what he will pay to the former. He will acquire occupancy right under a superior landlord, but none under a subordinate holder, the latter being himself a tenant with occupancy right. So that without fixity of tenure, freedom of sale or security of fair rent, the actual cultivator of the soil under the operation of this Bill will be reduced to the miserable lot of a poor day-labourer.

XII. And this evil will be both multiplied and aggravated, as the Bill proposes to encourage sub-letting. If there is anything in the agricultural system of Bengal, which has tended to depress the condition of the actual cultivator of the soil, it is sub-infeudation. The actual agriculturist, who constitutes the lowest link of the chain, necessarily bears the whole burden, and the more the chain will be lengthened, the worse will be the fate of the actual cultivator of the soil. The new tenure-holders, who are created by the Bill will be small proprietors, and it may be easily imagined whether small proprietors, themselves not agriculturists but absorbing agricultural profits, are more conducive to the welfare of the agricultural population than large proprietors. By-and-bye, as the capital of these small tenure-holders will increase, they will also become large proprietors. The result of the proposed Bill will, therefore, be the destruction of the present proprietors, who have either inherited or paid fair market-value for their estates, the creation of a new class of small proprietors, who will, for the most part, acquire their rights without paying for them, and the impoverishment and degradation of the actual cultivators of the soil.

Such, in brief, are the manifest tendencies of the proposed Bill, opposed to all principles of equity and fairness, to the guaranteed rights of the landlord, and to the best interests of the actual cultivators of the soil.

10. That no valid proof has been adduced shewing the necessity for this wholesale revolutionary and confiscatory legislation. The Rent Commission, which originally drafted the Bill, as already stated, did not take any evidence on the subject. No less an authority than Sir Richard Garth, the eminent Chief Justice of Bengal, says—"The Bill is calculated to deprive the landlords unjustly and unnecessarily, in my opinion, of rights which the courts of law have always considered to be their due." Indeed, the whole Bill, whether as originally framed by the Rent Commission, or subsequently revised by the Government of India, has been based on arbitrary assumptions and gross predilections. Your petitioners respectfully appeal to Your Hon'ble House to consider whether rights and interests, worth millions upon millions of pounds, and consecrated by solemn acts of the State, and ratified by the sanction of nearly a century, should be sacrificed for sentimental and fanciful considerations.

11. That, on the other hand, there is abundant testimony to show that the tenantry of both Bengal and Behar have made rapid strides in progress and prosperity unhampered by the existing land-laws. The latest and most emphatic testimony is that of Sir Ashley Eden, the late Lieutenant-Governor of Bengal. Thus, in 1877, after making a tour in the interior, he made the following remarks on the condition of the agricultural population of Bengal:—

"Great as was the progress which I knew had been made in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remember them to occupy when I first came to the country. They were then poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent and as comfortable as the peasantry, I believe, of any country in the world; well-fed, well-clothed, free to enjoy the full benefit of their labour, and able to hold their own or obtain prompt redress for any wrong."

As regards the peasantry of Behar the same high functionary, in an address to a deputation of the Behar Landholders in 1881, said:—

"I can assure you that nothing has given me greater pleasure than to notice, as I have had ample opportunities of doing, the extraordinary improvement in the condition of the people. It is made manifest in a hundred ways daily, even to the most casual observer. I hear the same story from all classes, official and non-official, and it is a matter for general congratulation."

"This improvement is due to various causes: first and foremost, to several succeeding harvests, plentiful almost beyond the recollection of the present generation, and these full harvests followed years of trial and famine; next there has been, with growing prosperity, an increase in the value of land, a *general awakening* of the cultivating classes, and an improved knowledge of their legal rights and privileges, and this has, I hope, been accompanied by a strict administration of the law. Then there has been a greater readiness on the part of landlords to recognise and affirm the rights of cultivators, and I hope that this may to some extent be due to the influence of your Association."

Surely, in the face of this strong and authoritative testimony, it cannot justly be contended that the agricultural prosperity in Bengal and Behar is impeded or hampered by the existing land-laws.

12. That the proposed Bill is ill-suited to the purposes for which it is intended is evident from the fact that the Bill is not made applicable to the State in regard to property which it holds in the capacity of a landlord. The State has a separate and summary law for the settlement and recovery of rent on its own estates. Even when it manages in trust the private estates of minors or wards under its care, it is not subject to the ordinary procedure for the realization of rent. If an enquiry be made, it will be found that the tenants of the State landlord are by no means better off in life than those of the private landlord; perhaps in many instances worse off. It is but reasonable that, *ceteris paribus*, the same land-law ought to apply equally to the State landlord and the private landlord, for surely what is done by the State ought to be regarded as the best example for the private landlord.

That in conclusion, your Petitioners pray that Your Hon'ble House will be pleased to take the above statements, facts, and reasons into consideration, and to adopt such steps as to Your Hon'ble House may seem meet to prevent the passing of the Bill under notice.

And Your Petitioners, as in duty bound, will ever pray.

Signed by the Maharaja of Burdwan, Maharaja of Durbhanga, Maharaja of Hutwa, Maharaja of Dumraon, Maharaja Rai Jotendro Mohun Tagore, Nawab Abdool Gunny, Nawab Ahasanwola Khan Bahadoor, Maharaja Komul Krishna, Maharaja Norendra Krishna, Raja Poorno Chunder Singh, Raja Suttvanund Ghosal, Raja Promotha Nath Roy, Raja Surjakant Acharya Chowdhry, Raja Hurbullub Naram Sing, Raja Shyama Sunker Roy Chowdhry, Nawab Mir Mohamed Ali, Babu Joykissen Mookerjee, Babu Peary Mohun Mookerjee, Babu Bejoykissen Mookerjee, Babu Surendra Mohon Tagore, Hon'ble Doorga Churn Law, Babu Gobind Lal Seal, Babu Kali Krishna Ghose, Babu Lolita Mohun Sigdurga, Babu Kissory Mohun Gossami, Babu Rajendralala Mittra, Hon'ble Hurbans Sahai, Hon'ble Mohamed Yusuff, Babu Mohiny Mohun Roy, Babu Saligram Sing, Babu Mohesh Chunder Chowdhry, Babu Jogender Chunder Ghose, Babu Janoky Nath Roy, Babu Gobind Chunder Dutt, Babu Ram Sunkur Roy Chowdhry, Babu Parbati Sunkur Roy Chowdhry, Babu Girja Sunkur Muzoomdar, Babu Kuluda Kinkur Roy, Babu Sita Nath Roy, Mr. J. J. Keswick, of the firm of Jardine, Skinner & Co. and Watson & Co., Mr. W. B. Morrison, Mr. C. J. Quadros, Mr. J. F. Cauty, and Hon'ble Kristodas Pal, Secretary.

The above petition has been presented to the House of Commons by Mr. Stanhope.  
A similar petition has been presented to the House of Lords.  
*Calcutta, the 1st July 1883.*

*Notes on the Bengal Tenancy Bill.*

*Section 3.—Definition No. 3.*—The word tenure should not include a ryot's holding although the rent thereupon is fixed. It would lead to confusion if ryoty holdings, comprising a beega or a few beegas of land, be designated by the same term which people have been accustomed to apply only to putnis, durputnis, and other dependant talooks. The Bill does not provide for registration of transfers of tenures in the landlord's sherista, nor does it give the landlord a right of pre-emption in respect of such transfers, and it gives tenure-holders a right of conferring a right of occupancy on their under-tenants. These provisions show what confusion would arise if ryoti holdings be classed as tenures (*see* remarks on section 14).

*Definition (5).*—The word ryot should be clearly defined. By the definition as it stands, a trespasser would be a ryot if he "holds land for the purpose of agriculture, horticulture, or pasture." It is scarcely to be supposed that the law about trespass is to be circumvented in the case of men who surreptitiously scatter seeds in another's land, in a country like India, where fields are not, generally speaking, provided with fences or other boundary marks, and from the nature of the case it is impossible to watch who scatters seeds or at what time. The reaping season is the only one when a trespass of the land can be made out, and then trespass is given undue advantage under the section. Again, a person who has established a mart or a factory on his land, or who uses it for the purpose of brick-making, would be a ryot if his ancestor came into the possession of the land for the purpose of agriculture.

*Definition No. 10.*—The definition of rent should be altered with a view to provide for cases in which the ryot is deprived of his use and occupation of the land by an act of dispossession committed by a third party—a circumstance which does not legally affect his liability to pay rent. Or it may be that a lease is taken or engagement of some kind is made for the use of land, but afterwards circumstances, not due to any act or neglect of the lessor, might intervene to prevent the lessee from using or occupying the land, such as want of capital to build a hut or to cultivate the land, and in such cases the penalty should rest with the party who fails; and not he who is deprived of the rightful use of his land by the failure of the defaulter.

*No. 15.*—"Transfer" should not include mortgage, otherwise a mortgagee without possession would have the right of getting his name registered in the zamindar's sherista.

*Section 4 (c).*—The proposal to exempt khas mehals and wards' estates from the operation of the proposed law is anything but reasonable. It is but only fair that the rights of all tenure-holders and ryots should be regulated by one code of laws. Nothing would create a greater confidence in the minds of the people in the justness of an act defining the rights and obligations of landlords and tenants than the fact that it applies equally to Government as landlord and to private landlords. There is no difference in the position and character of the subordinate agency employed by Government and by private landlords in the collection of rent and management of the estates, and yet the State has secured to itself a special and summary procedure for the recovery of rent. In the matter of rights and obligations relating to land, however, the people have a right to expect that there should not be one law for private landholders, and another for the strongest and most irresponsible of landholders—the State.

*Section 4, Illustration.*—The illustration is most unfortunate. It assumes the existence of a customary right which does not exist anywhere. It would be an encouragement to under-ryots to make false claims of a right which has not once since 1793 been put forward in any instance. The Bill itself contains no provision clearly defining the rights of such ryots, and an enunciation of the rights of under-ryots is a question of no small difficulty. A world of confusion would arise in cases of sale, forfeiture, and merger of the superior right if under-ryots be declared to have, at least in some places, a right of occupancy.



*Sections 5-8.*—These sections involve an arbitrary inroad upon one of the most valuable rights of the landholders. While khamar lands are frequently converted into ryoti lands by the act of the landholders, large additions are daily made to his khamar lands by accretion, relinquishment, deaths of ryots without heirs, purchase of holdings, &c. From their very nature all accretions are private property of the landholder, and as such they must begin by being khamar, for no ryoti interest has till then accrued on them, but the sections deprive the landholder of the full benefit of such accretions. This is quite uncalled for and most arbitrary. As regards accretions, the existing laws grant them to the zamindar as his special right. And the proposed sections indirectly transfer them to persons who may in future become ryots. Nothing can be more unjust, moreover, than to fix a maximum limit to the area of khamar lands of a landholder, and thus to place restrictions on his right to let such lands in any manner he pleases. The principle which underlies these sections would seriously clog, if not extinguish, an undoubted right which landholders have all along enjoyed, namely, the right of claiming enhancement of rent on the ground of the ryot being in possession of more land than what he pays rent for. But besides being unjust to the landholders, the measure is eminently impractical. It ignores the existence in the village of all rent-free lands, all service lands, and all land temporarily given away by the landholders for the benefit of pundits, or moulavis, or for the expenses of worship of a village idol, or for the annual celebration of a village festival. To what class would these lands belong? To poor villagers a classification of lands which reckoned all these lands as ryoti lands would be simply incomprehensible. Besides, a very small number of zamindars and talookdars have got measurement papers of their villages which might enable them to submit statements of khamar lands in their villages. It would require decades of time and an outlay of crores of rupees to enable the Bengal landholders to submit such statements. The amount of trouble which a determination of khamar and ryoti lands would cause to the landholders and ryots would itself be enormous, and the loss of time to public officers in deciding disputes and appeals would be great, specially as the areas of a vast number of estates and villages undergo continual changes by the action of large rivers which intersect Lower Bengal.

*Section 14.*—This rule is intended either to attach a value to a class of property which never had such value before, or to simplify classification. In the former case it unnecessarily and unjustly deprives the landholder of one of his existing rights, and in the latter it is objectionable for the reasons assigned in the remarks on section 3, definition 3.

*Section 15.*—Act X of 1859 did not directly or indirectly set aside the right of the zamindar to enhancement under the Regulations of 1793, but provided a remedy for the difficulty that had arisen in producing proofs of continuous possession at a uniform rate previous to the date of litigation. This placed the zamindars at a great disadvantage and they complained of it most bitterly. But instead of giving the zamindar any relief from the operation of the rule of 20 years' presumption, the section in a manner completely shuts them out by providing that proof of uniform payment of rent for any period of 20 years (and not 20 years immediately before suit as at present) would raise this presumption. Sir Richard Garth truly observe that "this section has undoubtedly operated very unjustly against the landholders;" and further on—"But in the case of rent it might well be that for 20 years no ground for enhancing it had ever occurred; or from the fact of the landlord being a minor, or female, or over-lenient with his tenants, any opportunity for enhancement might not have been taken advantage of, and in such cases it would be hard to presume against the landlord that because the rent had not been enhanced for 20 years, it has been fixed from the time of the permanent settlement." The experience of the last 23 years has shown that in 95 per cent. of suits for enhancement of rent landlords were unable to rebut the presumption thus raised; and how could they? Those who have come into possession of estates and talooks by purchases made at sales for arrears of revenue or rent, or in execution of decrees, did not get a scrap of paper belonging to the former proprietors, while those who purchased at private sales were in no better plight, considering the great difficulty of preserving from white-ants and other sources of destruction, massive collection-papers of a period more than 30 or 40 years old. It is impossible therefore for landholders to adduce evidence except in rare cases to rebut the presumption, and it was this consideration which induced Mr. Reynolds to suggest an amendment to the effect that no such presumption would be raised unless the ryot succeeded in proving uniform payment from 1839, i.e., 20 years before the date of the passing of Act X of 1859, which for the first time enacted the rule. The observations made by Mr. Reynolds in support of the change are unexceptionable:—"Allowing all due weight to the arguments of the Commission, it is to be remembered that the presumption was first introduced by Act X of 1859, and that it was then necessary for the tenant to prove a uniform rate from 1839. It is now only necessary to prove such uniform payment from 1861. As there is reason to think that rent receipts have been much more regularly given, and much more carefully preserved, during the last 20 years than during the 20 years which preceded them, it seems to follow that the lapse of time has made it more and more easy to raise the presumption, and more and more difficult to rebut it. Nor can it be denied that auction purchasers labour under a special grievance in this matter. If it be said that they may be expected to regulate their bids accordingly, it may be replied that it is not for the public interest that estates should sell below their value on the ground that the circumstances of the sale facilitate the advancement of fraudulent claims by the tenant." It behoves the

legislature to consider how very easy it is for ryots, with the aid and connivance of former talookdars and their gomastas, to produce rent receipts showing uniform payment for 20 years. The injustice of the rule of presumption is clear from the fact that Government, with all its prestige and resources, wish to keep clear of it in respect of temporarily-settled estates. The exception which section 20 of the Bill makes with reference to such estates prove beyond all manner of doubt the necessity of a change of the law for the behoof of the landholders. The remarks made by Mr. Reynolds on this head are conclusive. He says:—"The exception in the case of tenures in an estate not permanently settled is stigmatized by Baboo Joykissen Mookerjee as an envidious distinction which shows the injustice perpetrated on the holders of permanently-settled estates. A little consideration will show that the exception is perfectly reasonable."

*Section 16.*—There can be no objection to the rule laid down in the last part of this section, if the commutation of the rent in kind into a fixed money rent is the voluntary act of the landholder; but if such commutation be made at the desire of the ryot, and against the wishes of the landholder, as provided for in section 82, the rule would be very unjust to the landholder. It would in that case be in the power of every ryot to prevent enhancement of rent on the ground of a rise in the value of produce which payments in kind secure to the landholder.

*Section 18.*—This is a new restriction on the right of enhancement, alike unfair and uncalled for. In those cases in which it will be shown that a tenure has existed since the Permanent Settlement, although at a varying rent, the zemindar must prove his right to enhance before he gets a decree. How is he to prove such a right? If that right be not deemed clear from the Permanent Settlement Regulations, landholders must give up all attempt of proving it by proof of custom or contract. There is no custom, one way or the other, affecting the zemindar's right of enhancement, and as regards contract it is well known that no written engagements exist in respect to a large number of tenures.

*Section 25.*—This section gives ryots a right of free sale of all holdings which are protected from enhancement of rent either by agreement or under the operation of the rule of 20 years' presumption. Nothing can be more unjust to the zemindars, or more ruinous to the ryots. It deprives the landholder of his right of choosing his own ryots. It requires no great experience of mofussil life to see that the learned Chief Justice is quite right in considering this to be "far from a sentimental grievance." A provision which allows ryots to thrust upon a landholder as his tenants persons who are his avowed enemies, or who are notorious bad characters, and who would therefore in all likelihood create disaffection and combination among his other ryots, place obstacles in the collection of rent, commit breaches of the peace, and sow the seeds of discord among a peaceful community, affects most materially the proprietary rights of the landholders. It will be seen that in the case of these protected holdings the landholders would not have a right of pre-emption, such as is provided for by section 51 in the case of mere occupancy holdings, but it may be urged that the number of such holdings is small. It is well known, however, that during the last 23 years the courts have indiscriminately declared a very large number of holdings in every district to be protected from enhancement, and that the number of mukurree leases granted by landholders during this time is considerable. In one year alone the number exceeded 19,000, as shown by registration returns. And then the right is proposed to be given not only to those whose holdings are protected by agreement, and those whose holdings have been declared protected after judicial enquiry, but to the holder of every "permanent tenure." Who is to judge whether a tenure is permanent or not? In 999 suits for enhancement of rent out of every 1,000, the ryots claim their holdings to be protected under section 4. No occupancy ryot would be so unmindful of his own interests as to admit his holding without any sort of struggle to be not protected from enhancement by giving his landlord a right of pre-emption when he wishes to transfer his holding. The effect of the provision under notice would therefore be that, with the exception of that inconsiderable number of holdings which have been declared by the Courts at different times to be not protected from enhancement, all other holdings will be capable of being freely transferred in spite of the landholders. The landholder will have no right of pre-emption in such cases. He may of course contest by a suit in court the validity of such transfers, on the ground that the holdings are not permanent, but to what an alarming position would the landholder be drifted if he were called upon without a moment's notice to prove scores, perhaps hundreds, of different holdings not to be protected from enhancement. He will not be allowed his own time to decide when he will sue a ryot for enhancement of rent. He must without any notice accept a stranger as his ryot, and also give up for ever his right to enhance the rent of a holding, or institute suits to establish his right to enhance, with the inevitable prospect of a defeat.

Nor are the evils apprehended, or likely to arise, from the working of the law to be confined to the landholder only. The ryot is for certain to suffer from them even more grievously. Whereas now they have permanent tenures which they cannot be deprived of in any way, except by their own default in paying rent, and their sons and grandsons and successors without limit may inherit, and always remain owners of their ancestral fields; under the new law they will be liable to, and practically will soon be reduced to day-labourers, and their fields will pass to middlemen, thus defeating the primary and professed object of Government, namely to better the condition of the ryots. Our conviction in this respect is firm, formed as it is by our thorough personal experience of the country and the condition of the poorer classes. Nor is this belief unshared by the governing classes. Mr. Ilbert,

when introducing the Bill in adverting to the power of sub-letting, remarked:—"The powers of sub-letting which the Bill recognises may in time lead to a state of things in which the great bulk of the actual cultivators would be not occupancy ryots, but under-ryots, with but little protection of the law" (page 291). The power of forced sale will greatly hasten this consummation.

The learned Chief Justice has observed "that to give a poor population like the Bengal ryots the means of selling or mortgaging their tenures at pleasure is a very certain means of making them improvident. I should have thought that the most effectual way of protecting such people, and preventing them from wasting their substance, would be to secure them a permanent interest in their property by prohibiting the alienation of it in any shape or way." The truth of these observations have been painfully illustrated in a large number of cases. Whatever may be the custom in some of the eastern districts, the sale of ryoti holdings, even with the consent of the landlord, is very limited in the western districts. It is mostly those holdings in respect to which the right of sale is expressly reserved by a lease that are now and then sold in the western districts; but when the landholder neglects his own interests, or when the proprietor is an infant or a widow, or when by reason of long-continued litigation among the different co-sharers of a property the management is left entirely in the hands of the local agents, it is then that opportunity is taken by money-lenders, traders, and others to buy up ryoti holdings, not for the purposes of cultivation, but for letting the lands, in most cases to their vendors themselves, at a large profit. The purchasers become middlemen and the original ryots become koria or under-tenants with no rights at all, and are placed entirely at the mercy of their superior holders. It is needless to add that small middlemen are worse than useless factors in Indian social economy, and that as a general rule the ryots of large zemindars are much better off than those under small middlemen. The evil would increase a hundredfold if a right of free sale were given to the ryot. If the present law were left untouched in this respect, matters would adapt themselves to local conditions and circumstances. The custom which has grown up in some of the eastern districts has nothing pernicious in it. There the holdings are large, cultivation is mostly carried on by hired labour, and the transfer of the holding causes therefore no change for the worse in the condition of the tenant. The lesson given by the Deccan ryots should be a warning to the extension of the right of free sale to other places. "The saleable value of the land greatly increased the credit of the ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed on."—Secretary to the Government of India, to the Secretary to the Government of Bombay, dated 29th February 1879.

*Section 26.*—In providing that no holder of a permanent tenure shall be evicted except for breach of a term of a *written* contract, this section imposes a condition which will deprive landholders of their just rights. It is well known that written engagements are exchanged between landholders and their tenants only in a very few cases. Where there are no written engagements, a landlord would therefore be unable to evict a ryot, even if he builds a factory or establishes a mart on his land; nor would he be able to claim a forfeiture of the tenancy if the ryot denies the title of his landlord. The language of section 50 (*d*) is better, but still defective contract, written and unwritten, and custom should be allowed to govern the rights of parties in the matter of ejectment.

*Section 27.*—The first thing which strikes one with reference to this section is, that the Bill does not provide anywhere for the registration, in the landholder's sherista, of transfers of occupancy holdings. The uncertainty which exists as to whether a holding is a mere occupancy holding or a tenure, *i. e.*, a holding protected from enhancement, render it essentially necessary that all transfers should be registered. The right of pre-emption, it is true, would give the landholders the requisite information in certain cases of transfer, but, as has been already observed, that right would be more illusory than real. Besides, why should not successions to occupancy holdings be registered in the zemindar's sherista? A landholder should not, moreover, be held bound to register mortgages of tenures, specially where possession has not been made over to the mortgagee. The landlord is entitled, in some cases, to demand from the purchaser of a transferable tenure security for the regular payment of rent. Provision should, therefore, be made for the deposit of security or the execution of a security bond where it is demandable by law or custom.

*Section 28.*—This section gives the tenant the alternative of applying for registration of transfer either to the landholder or to a revenue officer appointed for the purpose. Nothing can be more objectionable. It is one of the numerous cases in which the Bill contemplates officious legislation for the transfer of management of property from the hands of the owner to those of a public officer. It would unnecessarily impose costs both on the tenant and the landholder. The tenant should have a right of applying to the revenue officer only after the landholder has refused to register the transfer. The section, moreover, ignores possible objections on the part of the landlord to the registry. The transfer may be one of a part of a tenure, one of a non-transferable tenure, or one which is otherwise invalid, and yet this section enjoins that whenever application is made to the revenue officer a notice shall issue on the landlord, not asking him to show cause why he should not register, but requiring him to register the transfer. It is true that section 32 provides for objections which the landholder may raise to an application for registration, but why compel the parties to undergo the trouble and incur the costs of regular suit without giving them an opportunity of coming to an amicable arrangement among themselves.



*Section 29.*—In this section, too, provision should be made for possible objections on the part of the landlord to the registration of transfers.

*Section 34.*—The tenant should be made liable to pay a fee of 8 annas for the first copy of the entry, instead of his getting it free of charge. The Rent Commission suggested the imposition of a fee for the first copy. The service to be done is for the benefit of the tenant, and in equity he should be bound to pay for it. The zemindar derives no benefit; nay, he may be called upon to make a registry which will bring in an unwelcome tenant, who will prove injurious to his interest, and he cannot fairly be called upon to render service without a legitimate and reasonable fee.

*Section 43 (a).*—The word "village" should be more accurately defined with reference to its fiscal constitution. It frequently happens that the geographical boundaries of a village contain the lands of a second and third village belonging to a different estate and owner. The definition of the word here given would therefore give as against a proprietor a right of occupancy, and that of a settled ryot to persons who had never before held land in the village or estate belonging to that proprietor. This would be an extension of the right which is neither sanctioned by the Secretary of State, nor contemplated by the framers of the Bill. Many villages have so grown up as to have combined into one, bearing in such cases a compound of two or three names, and others may do so; some have grown up into towns of considerable size, whereas the principle on which the provision is justified is that the holdings are contained in the same village or part of a village as owned by a single proprietor. Clause (b) of the section shows this clearly, but with a different object as reprehensible as this.

*Section 43 (b).*—Considering the purposes to which the word estate has been used in subsequent sections, the definition of the word here given is very objectionable. The arbitrary meaning, opposed to every conception of the term and to its definition in section 3, attached to the word by this sub-section, will lead to great confusion, while the inroad into proprietary rights which it involves is great. The effect of this section would be, that a person who has never held any land under A, but who has held land for 12 years under B, perhaps an enemy of A, will be deemed a settled ryot of A's estate, if at any time subsequent to 1853 the two estates formed or formed part of a parent estate. Some estates which formerly comprised lands in two or more districts have subsequently to 1853 been partitioned, but on that very ground this section would deem a ryot of a village in Burdwan a settled ryot of a village in Hooghly, which is more than 60 miles apart, and which he has very likely never seen in his life. The absurdity of a theoretical rule conceived in utter ignorance of existing circumstances can go no farther. What, again, would be the effect of the interpretation in question with reference to section 47. It would be simply this, that a person who has held land under a landholder for a few days would acquire a right of occupancy if he had held land for 12 years in a distant estate which once formed a part of the same estate as his. An examination of the nature and origin of estates would show how harmful the proposed definition would be. The principal estate of the Mobaraja of Burdwan is composed of villages scattered in five or six districts. The Bill certainly distorts the views on this point of the Secretary of State, who evidently refers to partitions of estates in future when he remarks—"It will be necessary in actual legislation to provide that this right is not forfeited by any sub-division of estates and alteration of village boundaries."

*Section 44.*—Both in the definition of ryot in section 3 and of occupancy right in this section the important qualification inserted in section 6 of Act X of 1859 has been omitted. The right should attach to the ryot with respect to any land only "so long as he pays the rent payable on account of the same." It is an important qualification, and one that goes to the very root of the matter.

*Section 45.*—The "settled ryot," as defined in this section, is very different from a 'resident ryot' familiar to the Indian lawyer. The rights given to such a ryot by sections 57 and 61 are most objectionable. The latitude which sub-section 3 gives to the acquisition of the right is also very objectionable. In joint Hindu or Mahomedan families the number of co-sharers, male and female, in a ryotty holding is usually very large. Should all and every one of them acquire the rights of a settled ryot? Though some of them may be living for years, and in fact presumably far away from their ancestral homes.

*Section 46.*—This section provides that a ryot must cease to hold land for the full period of one year before his title to the land expires. In the meantime the land will remain fallow, and the landholder will have no security whatever for his rent. It would not be at all unreasonable if it were held that a ryot's title would cease by his absenting himself from the village for six months without making any provision for the payment of the rent payable by him. By the Central Provinces Act an absence of 30 days operates to extinguish the ryot's title.

*Section 47.*—A ryot who who has held on the 3rd of March 1883, even for a few days, a large quantity of land in a village, would by this section, any contract to the contrary notwithstanding, acquire a right of occupancy in respect to that land if he or his predecessor had held even a kotta of land in that village, or in the estate to which it appertains, for a period of 12 years. This is a most unjust and uncalled for invasion of the rights of landholders. The rule for the acquisition of the right of occupancy laid down in section 6, Act X of 1859, has been declared by eminent judicial authorities to be an encroachment on the proprietary rights of landholders. It was at first proposed to apply the rule only to resident ryots, and it

was only on the recommendation of the authorities of the North-Western Provinces that it was extended to all classes of ryots, but with a view to palliate the wrong thus done to zemindars a section (section 7) was enacted, which gave the landholders a power to prevent the accrual of the right by taking proper engagements from the ryot. It is admitted that that law has succeeded in giving fixity of tenure to a large majority of the ryots. Where, then, is the necessity of this fresh and unjust inroad into the rights of zemindars? The statement that landholders have hitherto prevented the accrual of the right of occupancy by not allowing their ryots to hold the same land continuously for a number of years is, in the main, incorrect and unfounded. If the practice has grown, as has been stated, in some estates in Behar the landholders are not to blame for it. They have done merely what is not wrong, but what they are expressly authorized by law (see sections 7 and 9, Act VIII of 1869) to do in order to protect their own interests. It should be remembered that the practice did not affect old ryots, *i.e.*, those who have acquired rights of occupancy, and that when the landholders could legally prevent the accrual of the right of occupancy by taking proper engagements from their ryots, this constant shifting of cultivation may be due to other causes, the conditions of the soil for example, than the desire of the landholder to gain his own object. The Secretary of State has, it is true, given his sanction to a revision of the law relating to right of occupancy nearly, though not quite, in the way proposed by this section, but it is no wonder that such sanction has been given when it is recollected that the opinions of high and experienced officers of Government, of men like Lord Ulrick Browne, Mr. J. Monro, and others were kept in the back ground, and the isolated opinions of a few officers who are wedded perhaps to particular pet theories were held up to His Excellency as evidence of the condition of the ryots and of the conduct of the landholders.

The provision against freedom of contract in respect to the accrual and to the incidents of the right of occupancy is indefensible on all grounds, rational and economical. The ryot is a free agent in all other concerns of life. He may sub-let his lands at any rent, however small; he may borrow money at a ruinous rate of interest; he may relinquish, mortgage or sell his lands whenever he pleases, and convert himself into a day-labourer, but he must not consent to forego the acquisition of right of occupancy even in regard to land which he requires for temporary purposes, or to pay enhanced rent to his landlord at a rate which he has not the least disinclination to pay. The ryots are unquestionably a much more intelligent class of men than day-labourers; but although the latter are free to contract away their liberties for service in an unknown land for years, the freedom of the former must be restricted, in the opinion of our legislators, in matters in which they are the best judges of their own interests. The argument drawn from section 58 of Regulation VIII of 1793 in support of the proposed restriction is at best fallacious. That section required the form only of the potta to be submitted for approval once for all, and left the adjustment of the conditions, terms, and details to the parties concerned. Section 56 of that Regulation clearly shows that no sort of restriction whatever was intended to be placed in the way of the contracting parties. It is observable that a far different rule has been proposed for cases in which the interests of Government are concerned. The Bill, section 121, empowers a revenue officer to override contracts entered into by landholders with their ryots at reduced rents in estates not permanently settled, and to assess the rent in accordance with the provisions of the Bill.

When an owner, tenure-holder, or izardar holds alone as such any land, he would be prevented by the proviso of this section from acquiring a right of occupancy in respect of that land. Is it intended to mean that when land is held jointly by a number of owners, tenure-holders, or izardars, such a right may be acquired?

*Section 48.*—This section provides that a right of occupancy in an under-tenant may accrue only by an act of a permanent tenure-holder, but that after such a right has been created, all the incidents of an ordinary occupancy right will attach to it. A right of occupancy within a right of occupancy has been hitherto unknown in this country. It would give rise to great confusion in the matter of determination of rent payable by the sub-occupancy ryot, and of his rights and liabilities in cases of default of payment of rent by the superior ryot, and of distraint of crops and sale of the superior holding. This section would, moreover, enable ryots to introduce into the village, as under-tenants with rights of occupancy, persons who are obnoxious to the landholder, without the latter having any means whatever to prevent it.

*Section 49.*—The extension of the rule as to occupancy rights to khamar lands, unless prevented by contract, is an uncalled-for infringement of the rights of landholders. It is opposed to what Mr. Ilbert emphatically said in Council: "We might, I think, very fairly say to the zemindars—'This is private, sir, or khamar land is, and shall be, your own in a special and exclusive sense. You may do as you like with it.'"

*Section 50 (d).*—The very condition essential to the continuance of a right of occupancy in respect of any land is the payment of the rent payable for the same. It has been observed before that the omission of the qualification, namely, "so long as he pays the rent payable in respect of the same," is a material defect in the definition of the right given in the Bill. It is not in a land which the ryot merely occupies that he should acquire a right of occupancy, but, as observed by the Secretary of State, it must be a land which "he occupies and pays rent for." Such being the conception of the right, it is difficult to see how the incident of ejectment for non-payment of rent can be separated from it. The penalty is inherent to, and inseparable from, that right. In omitting to provide for ejectment for

non-payment of rent the Bill takes away a remedy which the landholders have not only all along enjoyed, but which is necessary for recovery of their rents. It would be found on enquiry if one were made, that in a very small number of cases indeed have the landholders availed themselves of this remedy, and that in a large majority of the cases in which decrees were obtained for ejectment the lands have been re-let to the defaulting ryots after some arrangement for the payment of the arrears have been come to; but the very existence of the remedy is a check to habitual and willful non-payment of rent. For reasons stated with reference to section 26, a landholder should not be deprived of his right of ejecting a ryot where he is entitled to do so by custom or unwritten contract.

*Section 50 (c).*—Both Sir Ashley Eden and the Secretary of State are strongly against the practice of sub-letting. The latter remarks—"I entirely agree with you that sub-letting, where the custom has not become firmly established, should be discouraged," and yet the Bill would give the right indiscriminately to all occupancy-holders. If it be the object of the legislature to foster a substantial class of cultivators who have a direct interest in the agriculture of the country, that object would be frustrated by giving to all occupancy ryots the right of sub-letting. There are, doubtless, occasions when sub-letting may become necessary, as, for instance, when the holder of the right is a woman, or a minor or an invalid and a provision for sub-letting in such cases would doubtless be reasonable, but the grant of the right to all occupancy ryots, whether they have or have not the right by custom, would simply tend to create a class of middlemen who would enjoy all the rights and privileges taken away from the landholders, while the cultivators themselves would fare much worse than at present.

*Section 50 (f).*—The evils incidental to a rule for the free sale of ryoty holdings in this country have been already described with reference to section 25. If the free sale of permanent holdings be objectionable, how much more so would be the sale of simple occupancy rights held by persons who are in a majority of cases very poor, and who have no resources to fall back upon in seasons of agricultural distress. The result of such a rule would be, that within a few years the holdings will change hands, a number of middlemen will come into the possession of the greater part of the holdings of every village, while the original ryots themselves, who are the objects of so much tender solicitude on the part of the Legislature, will be reduced to the condition of day-labourers or of under-tenants paying rack-rents to their superior holders.

*Sections 51 to 55.*—The right of pre-emption proposed to be given to landholders on the sale of occupancy rights is as intangible as it would be ineffectual in palliating the wrong done to them by making the right transferable. The right of pre-emption would go for nothing if the ryot chooses to think—it would be preposterous to assume he would do otherwise—that his holding is protected from enhancement, or that it is a permanent tenure, and one therefore which under section 25 is not subject to the landlord's right of pre-emption. If the landholder wishes to assert his right of pre-emption, he must go to court prepared to prove the holding hable to enhancement, or that it is a simple occupancy holding, and that within six months from the date of sale, gift, or bequest. Nothing would be, however, more easy than for the ryot to defeat the landlord's right of pre-emption by keeping the transfer a secret from him for a period of six months, after the lapse of which the landlord would have no right or remedy whatever in respect of the transfer. The case would be much worse if the ryots combine against their landlord at the instigation of a neighbouring and unfriendly landholder, and call upon him to exercise his right of pre-emption at once in respect to a large number of holdings. Few landholders in Bengal have the means of meeting such a call. With rare exceptions, therefore, they will be placed in such a case at the mercy of their ryots. In cases of sales in execution of decrees the Bill does not provide for any service of notice of intended sales upon the landlord, but he is expected to make himself cognizant of all such sales and to bid at the sales—a provision which shows further how worthless is the right of pre-emption proposed to be given to landholders. The Bill makes no provisions whatever for cases in which one or two of several joint-owners claim jointly or in rivalry to exercise the right of pre-emption in opposition to the wishes of the rest.

*Section 56.*—The Bill, while professing to run on the lines laid down by the Secretary of State, makes departures from them here and there which are wholly unwarrantable. He nowhere sanctions the accrual of an occupancy right by any but a settled ryot, but this section would give the right to a perfect stranger, who is let into a land which has come to the landholder's possession by virtue of his right of pre-emption. This is, however, far from being the worst feature of this section. Any other purchaser of an occupancy holding will have the right of using it in any manner, and letting it at any rent, he chooses, but the landholder, the proprietor of the soil, must not only pay as much as the land is worth if he wishes to purchase it and let it with a right of occupancy even to a stranger, but he must not also let it at a rent higher than what he was receiving before his purchase. This is expressly opposed to all ideas of fair play at auction sales, to all economic principles, and to the views of the Secretary of State, who says that the landholder may let such land "at whatever rent he can obtain." The right of pre-emption would therefore be a positive wrong and disability, instead of a benefit to the landholder.

*Section 59.*—The objections to the restrictions to freedom of contract apply with double force to contracts relating to rent which the contracting parties with an eye to their own



interests will enter into. Whenever a ryot agrees to pay a certain amount of rent for a plot or plots of land, he does so after taking into consideration the situation and capabilities of the land and the profits it or they will fetch him. He is the best judge of his own interests in the matter; he has his remedy in all cases in which the least coercion has been used, and yet this section restricts his rights as a free agent, and makes a revenue officer the guardian of his interests. But will any amount of legislative precaution prevent the parties from entering into any contract for rent they might agree upon? The futility of such attempts was made abundantly clear by the experience of the usury laws. The result of such a law would be that honest zamindars would suffer, while those whose exorbitant demands for rent it is intended to limit would be able to carry everything in their own way.

The arbitrary limit imposed by this section to rent with reference to the value of produce of the land is anything but just and reasonable. Leaving aside the question of lands which were waste at the time of the Permanent Settlement, and which the landholders have a right to let to their best advantage, it cannot but be conceded that they are entitled to get the State share of the produce of the soil which was made over to them for an annual money value or revenue fixed in perpetuity. Any measure which would reduce that share cannot but be an act of spoliation, specially if it originates with that one of the contracting parties which received at least an adequate consideration for the bargain. It is well known that for the purposes of the Permanent Settlement the rent was assessed at from half to three-fifths of the value of produce. Whether the Government of 1793 was right or wrong in assessing the rent at such a ratio is a question with which neither the present Government nor the zamindars have anything to do. The British nation as masters of the soil took upon themselves the power of making what settlement of land revenue they thought proper on the assumption that they had got the land free of all previously existing rights and engagements (section 30, Regulation II of 1822). The rule in question is, therefore, a direct breach of the compact of 1793. If the Government wish to keep faith with the landholders, and to deal justly by them and their ryots, let the ratio of produce which formed the basis of settlement in 1793 in each district be enquired into and determined for the purpose of fixing a limit to the zamindar's claim for rent. One-half the value of the produce is not so high a ratio as it is supposed to be by some. Only last year the Bombay High Court decreed a claim for enhanced rent on the basis of half the value of the gross produce of the land.—3 I.L.R. 348.

The question of maximum limit to rent on the basis of a share of the produce presents another aspect. The ratio which rent bears to the value of produce varies in different districts from less than one-twentieth to more than one-half. Of what practical value is a maximum limit under such circumstances? In districts likee Dacca and Chittagong, where the ratio is low, the landholders would be entitled to double their rents after every 10 years; while the Hooghly, Burdwan, and such other districts, where the ratio is high, the rule will stop enhancement altogether, although, as a matter of legal right and justice, they are entitled to get as rent a sum which represents their original share of the produce. It is difficult to say how this variation in the ratio of produce in different districts took place; but if it be assumed that the ratio which formed the basis of the Permanent Settlement was pretty nearly uniform in these provinces, the present difference must have arisen by a rapid rise in the value of produce in districts like Dacca and Chittagong. Be the cause, however, whatever it may, it is undoubted that it has resulted in making estates and tenures in those districts much more profitable than those in Hooghly and Burdwan. The road cess statements show that, whereas in Hooghly the ratio of revenue to the total rent-roll of the district is 48.4 and in Burdwan 40.8, it is only 21.9 in Dacca, 24.7 in Chittagong, 16.1 in Mymensingh, 8.6 in Durbhanga, and 6.7 in Lohardugga. The effect of the rule would therefore be that, while it would press hard on the landholders, whose profits are small, it would give those whose profits are large an unlimited latitude for enhancement of rent.

The Bill allows the rent of a ryot to be doubled by decree of court in an enhancement suit. It is therefore difficult to understand why the increase of rent should not be more than 6 annas in the rupee when the enhancement is effected by contract. The rule is simply a premium on litigation.

*Section 61.*—When any land comes to the khas possession of the landholder, it is usually let to some one of his ryots. It is in rare cases that a stranger comes to rent the land, or the landholder has the inclination to let it to one whose antecedents are unknown to him. For all practical purposes, therefore, the landholder's right to let will be materially restricted, even in respect to land which we have been accustomed to regard as land over which he has absolute control. He would not be able to rent the land at a higher rent than what was previously paid for it, unless by a registered contract approved by a revenue officer, who should see not merely that the contract rent is not more than one-fifth of the value of produce, but also should satisfy himself "that it is fair and equitable, and that the ryot in entering into it acts as a free agent." The climax of the evil is reached in cases in which the landholder lets out land which has come to his possession by virtue of the right of pre-emption. Payment of the highest price available for the land does not give him an iota of right in excess of that restricted right he would have in respect of land which has come to his possession by relinquishment, forfeiture, or death.

*Sections 62 to 73.*—The first attempt made since 1793 to regulate enhancement of rent by the enactment of definite rules has failed, and it requires no great foresight to see that

the elaborate rules laid down by the Bill for the preparation of tables of rates would make matters much worse. It is anything but reasonable to expect that public officers, wholly ignorant of the condition of the people, of the nature of the soil, of the different kinds of crops, and of the agricultural capabilities of a village, would ever succeed in fixing proper rates of rent for different classes of land. They must err on one side or the other. Did not our judicial officers make confusion worse confounded by decreeing (before they ceased to decree any rates at all) a variety of rates for the same class of land in a village? The most feasible way of meeting the difficulty appears to be the legal recognition of the indigenous system of the country. Let the preparation of a table of rates for each village be entrusted to a punchayet consisting of a number of mandals and the zamindar's gomashtha of the village, and some provision made for cases of difference of opinion among them. A table or jamabundee so prepared would be more satisfactory to the parties concerned than any table prepared by a public officer, and all the trouble, expense, and loss of time, to the detriment of cultivation which it involves, would be avoided.

A provision for the payment by zamindars and ryots of the cost of preparation of a table of rates, including the salaries and portions of salaries of officers employed in the work, is unjust and unwarrantable. A suitor paying high institution and other fees is entitled to have his suit tried and decided, otherwise the salaries of Judges and Moonsiffs may with equal justice be made payable by him in addition to what he pays by way of institution and process fees. The payment of the cost of preparation of tables of rates would not relieve suitors of the cost of suit. After they have paid for the preparation of tables of rates, they would have to pay the costs of suit all the same. Again, after a table of rates has been prepared at an enormous cost, what use will it come to? In the adjudication of suits for enhancement of rent the court is required by section 73 not to rely solely on the table, but to adjudge the rate of enhancement on a variety of considerations. The condition of the land, the changes made in it, the persons by whom the changes were made, and the proportion of cost incurred by each contending party in making the change, would have to be enquired into, and latitude should also be given to custom and contract to vary the rates mentioned in the table. The great difficulty which officers would experience in preparing correct tables of rates, the enormous expenditure which the work would entail, the double costs which the procedure would throw on landholders and ryots, and the little practical use the table will come to in suits for enhancement of rent, are all considerations against the feasibility of this ill-judged measure.

*Section 74.*—Among the grounds on which the ryot is liable to pay enhanced rent to his landlord, that which in the present law provides for enhancement by reason of the ryot occupying more land than what he pays rent for, has been omitted in this section.

The Bill does not deny the landholder's right to get enhanced rent on this ground; but the manner in which that right has been declared in section 60 is so very indefinite, and the division of the lands of a village into khamar or ryotti is calculated to give rise to so erroneous presumptions, that it would be well both for the landlord and tenant that the law on the subject should be clearly laid down. The provisions of section 96 refer to cases in which it would be proved that separate plots of land have been added to the ryot's holding, but this is quite distinct from a case where the increase of area is due to a clandestine encroachment by the ryot upon adjacent, occupied and unoccupied, lands. The provision of the present law should be retained.

*Section 75.*—The proposal contained in this section to limit the amount of rent to the value of one-fifth of the produce of the land has been already commented upon with reference to section 59.

*Section 76.*—For ordinary cases a rule prohibiting the enhanced rent to be not more than double the rent previously payable is not objectionable, but a dogmatic rule to that effect would be productive of great hardship and injustice in cases in which the landholder, by means of large outlay of capital, raises the value of land to several times its original value. In such cases section 75 (a) gives the landholder the whole benefit of the change. Again, when an assessment is tainted with fraud and collusion, the restriction in question would result in great injustice. A zamindar or putnidar lets land to his relative or dependent at less than one-fourth the prevailing rate of rent. With a view to give colour of *bona fide* to the transaction a suit for arrears, or even for enhancement of rent, is instituted, and it is so managed that the rent is not disturbed. A number of such holdings may be created, and then the property might be allowed to change hands by default of payment of revenue or rent. Should the purchasers at the revenue or putni sale be precluded from getting more than the double rent in such cases? This section should therefore be modified so as to provide for cases of the nature above indicated. Regulation VIII of 1793, section 60, clause 2, provided for such cases.

*Section 77.*—When a landholder gets a decree for enhancement of rent, it is on the ground that he is entitled to it by reason of the increase in the productive powers of the land, or of a rise in the value of produce as determined by an examination of the produce or prices of a number of preceding years. The decree is for what the ryot has been withholding from the zamindar. It is not the case of a poor debtor who is unable to meet the creditor's demand, unless the court allows him to pay the creditor by instalments. The provision for gradual enhancement is therefore unjust and uncalled for. Again, section 201 gives the court a discretion to fix the date from which a decree for enhancement shall take effect. These two provisions taken together will give the courts a power to render any decree of enhancement abortive. Progressive rents are necessary only with regard to waste and jungle lands, which can't be cultivated all at once.



*Section 81.*—This section proposes to place restrictions on rents in kind, which are alike unjust and uncalled for. They are opposed to the declaration of Government to the effect that existing rents would in no case be reduced. It is well known that nine annas of the produce is not unusually the zamindar's share when rent is paid in kind. The ryots pay that share voluntarily, and there is no reason whatever why that share should be reduced to eight annas. The proposal that whatever be the nature of the crop grown on the land, the zamindar shall be entitled to get the value of his share only in staple crops, is still more objectionable, the rule or custom which regulates payments in kind embrace the number of crops, any one or more of which the ryot may grow at his pleasure, and whatever crops he grows he pays the fixed share to the zamindar. Why should this simple arrangement, which has received the sanction of immemorial custom, be interfered with, specially when no objection has been raised to it? Far from placing a restriction to the right of the landholders in this respect, the legislature should declare the customary right which they enjoy in common with the landholders of some other countries, Holland for example, of compelling the ryot to grow a new and paying crop, and to come to some fresh arrangement with his landlord if he wishes to grow a new crop of his own accord. Interference in matters like these, which can best be arranged amicably by the interested parties, is productive of great mischief, and is calculated to increase litigation to an alarming extent.

*Section 92.*—The draft Bill of the Rent Commission provided for a commutation of rent in kind into money rent at the instance either of the landholder or the ryot, but this section gives the right only to the ryot,—the party who has in most cases the choice of cultivating or not cultivating the land, and of relinquishing it altogether. Nothing could be more unjust to the landholder. Payment of rent in kind is a method of payment which saves the ryot the trouble and expense of taking his produce to the market, and of contesting the zamindar's claim for enhancement of rent, while it saves the latter the trouble and expense of periodically asserting and proving his claim to enhanced rent. It is a self-regulating system which adjusts itself to the variations in the price of produce, and one therefore which is best fitted to give to each of the interested parties his just rights without the interference of laws and courts, and is on that account eminently deserving of the support and fostering care of Government.

The ultimate loss to the zamindars, if such commutation were allowed, would be in other respects very heavy. After the rent has been commuted into money rent, the ryot need only relinquish the holding, and he or his neighbours would be able to compel the landholder to re-let the land at a rent not higher than one-fifth the value of the produce of the land. Payments in kind also secure to poor landholders their requisite supply of food-grain for consumption throughout the year, and it would be a source of great inconvenience and hardship to them if the ryot be allowed to change them into money rent at his pleasure. It should, moreover, be recollected that it is in respect of lands which are more than ordinarily subject to the risks of cultivation, and which the ryots do not venture to take at a fixed annual money-rent, that rent is paid in kind. Our legislators should think twice before they recommend a change which may ultimately injure those most for whose benefit they now wish it. It should also be borne in mind that in the two districts of Behar where bhooly rent obtains to a large extent the cultivation of land is carried on the co-operative system. Both in Patna and Gaya the cultivation of land mainly depends on the landholder. It is with his money that embankments must be raised and maintained, and it is with his money that *pyries* on water-courses must be cut and kept clear before the land can be cultivated. The ryots are altogether powerless to execute and maintain these works, and any measure which would throw the entire responsibility of cultivation on them would be their ruin.

*Section 85.*—In proposing that a right of occupancy in a bastu land should not lapse on a ryot ceasing to be the settled ryot of a village or estate, this section contemplates a great wrong to the landholder. At present, when a bastu land forms part of a holding, the right accrues and ceases along with the right in respect of the other lands of the holding. No such right should reasonably be allowed to accrue when the bastu forms no part of an agricultural holding; and a provision regarding bastu land, purely as such, would be out of place in an Act relating to landlords and tenants. If a ryot is allowed to have a right of occupancy in a bastu land, after he has ceased to be a member of the agricultural community, the effect on the rights of the landholder would be disastrous, with reference to bastu lands in marts and trading villages. The provision is, moreover, opposed to the well-established principle of law, that a landholder is not bound to recognise a division of ryoti holding—a principle which section 150 of the Bill fully takes cognizance of. The bastu as an occupancy holding gives a lien to its holder to claim under the proposed law all rights of occupancy to lands that he or any of his descendants may at any time take up. Without subjecting himself to the 12 years' occupation clause. Let a clandestine encroachment be once made by a ryot, even for a few weeks, and he becomes an occupancy holder. The economic effects of the provision would be still more mischievous. There is only a limited quantity of bastu land in every village, and if a portion of that area be taken out of the reach of the agricultural community, not merely would the integrity of holdings be destroyed but great inconvenience and hardship would be felt for want of bastu lands.

*Section 86.*—As observed under section 50, custom and oral contract, and not only written contracts, should be allowed their operation in the matter of ejectment from bastu land.

*Section 87.*—A maximum limit of 5 per cent. of the market value of the land to the rent of bastu land would be most arbitrary and unjust. Considering all the risks of loss



to the landholder by relinquishments, bad debts, diluvion, &c., rent on particular plots of land, calculated at 5 per cent. of the value of the land, would really come to a much lower percentage on the whole. Again, it is a well-known fact that in some districts, the southern portion of the 24-Pergunnahs for example, bastu lands bear the lowest rate of rent of all lands in a village, while in others, Hooghly for example, bastu lands bear the very highest rates of rent, and in others again they bear no rent at all. A uniform rule would be therefore quite unsuited to the circumstances of the case. The matter should be left to contract and custom.

*Sections 88-95.*—In the face of great anxiety expressed by the Secretary of State that the principle which allows no right of occupancy to accrue except by possession for 12 years should not be abandoned, and His Excellency's declaration that he attached great importance to it, this chapter proposes to give ryots, who have admittedly no right of occupancy, as good a right of occupancy as that created by Act X of 1859, if not one much more damaging to the landholder. The rent of such a ryot shall not exceed  $\frac{1}{8}$ th of the value of the produce of the land; he can't be ejected, except for breach of a condition of a written contract; his rent can't be enhanced without a notice having been previously served upon him and a decree having been obtained against him; he would be relieved of the liability of paying enhanced rent for the year next following the notice; if he agrees to pay the enhanced rent, no ejectment shall follow a decree for enhancement against him, unless the landholder deposits in court a sum payable to the ryot as compensation for improvements, and a further sum as compensation for disturbance; and in case of failure the decree would be void, and no further attempt at enhancements of rent allowed within the next 10 years. These are rights much greater than what an occupancy ryot enjoys at present. No wonder that objection was taken by Hon'ble Members of Council to the whole of this chapter, which trenches materially on the rights of landholders.

*Section 96.*—The assumption that even an occupancy ryot is entitled to the possession of accretions to his holding is wholly unwarrantable. It is opposed to the existing laws and judicial decisions on the subject. The accretions belong to the proprietor, who has the right of letting them out in any manner he thinks proper. While all losses by diluvion, change of course of rivers, and by relinquishments will fall on him, it is anything but just and reasonable to hold that the gain by accretion will be the ryot's and not the proprietor's. Again, why should the increased rent for accreted land be payable at the rates payable by occupancy ryots? It is well-known that accreted lands are much superior to old lands, and ordinarily bear much higher rents. The proposal to give ryots whose holdings are protected from enhancement a profit of 30 per cent. on the increased rent is equally unjust and unreasonable. But nothing could be more preposterous than the proposal that, while the enhanced rent for accreted land should be calculated at the rates of rent payable by occupancy ryots, the abatement of rent for diluvated land should bear the same proportion to the rent previously payable as the diminution of the total yearly value of the holding bears to the previous total yearly value thereof—a mode of calculation which would necessarily give the ryot, for no reason whatever, an abatement of rent, even as regards the land which would remain in his possession, and much in excess of the amount he would be entitled to by the rule of proportion.

*Sections 97-98.*—Such a variety of objections have lately been taken in trial of rent suits as to the instalments by which rent is payable, and so many capricious decisions have been passed on the subject, that some simple rule on the subject has become very desirable: instead of that, however, the Bill would make matters worse. In the case of tenure-holders and ryots whose holdings bear a fixed rent, the Bill would give free scope, in the first instance, to the terms of any agreement between the parties, then to custom, and lastly to such rules as may be framed on the subject by the Board of Revenue. In the case of a large majority of the ryots, viz., the occupancy ryots, the Bill provides that the number of instalments should on no account exceed four. It is a fact borne out by the Regulations that Government revenue was formerly collected in monthly instalments, subject to a penalty of 25 per cent. for default. By the custom of the country the rents of ryots are even now collected by monthly instalments, and all the leases evidencing creation of tenures, putni and other, contain stipulations for monthly payments. A reduction of the number of kists would therefore be unjust to the zamindars and tenure-holders. Mr. Reynolds' Bill effected a compromise in the matter which was acceptable to all. He proposed in his Bill to fix only four instalments, the date of each of which was timed just one month before the dates on which the four instalments of Government revenue are payable. A definite rule like this would be much simpler and more conducive to peace and harmony than a procedure which is sure to cause useless trouble and expense to suitors.

*Section 100.*—In providing for receipts for rent by the landlord the Bill evidently means receipts by his authorised agents. It would be well, however, if the meaning be made clear. Item (f) is never entered in receipts. It would be a source of useless loss of time to the agent, and it is altogether unnecessary. The amount of rent and the amount of arrears would be shown in the annual account. Why, then, require them to be repeated every time the rent would be paid. If the introduction of any change be at all desirable, the Legislature should see whether the *hatchita* system may not be introduced for the purpose of evidencing payments of rents. It has several considerations to recommend it. Item (g) ignores a long established practice. It offers a direct incentive to arrears accumulating, so that after the lapse of the statutory period of three years the ryot may wash himself clean

of all liability to arrears. On the other hand, it compels the landholder to resort to the civil court for every default, without showing any consideration to his tenant. In fact it is a premium on hard-heartedness, and discount on mercy. A zamindar should unquestionably have the right of crediting payments of rent to the account of arrears, if there be any, and the ryot should have no right to demand that it should be credited to a particular year and instalment, if the rent of previous years be in arrears. The item in question, being opposed to the established practice, should be omitted. Zamindars may fairly claim that the receipt they give to the ryot should be similar to the receipt granted to them by Collectors on the payment of revenue. It is necessary that the form of the receipt should be simple, and that it should not contain more than what is absolutely necessary, in view of the heavy and most unreasonable penalty which sub-section 4 imposes in respect of defective receipts.

*Section 101*—As proposed by the Rent Commission, the landholder's agent should be paid a fee of annas four or eight before the ryot is declared entitled to get an account which the agent or his master is on no earthly ground bound to give. For reasons above stated, item (f) should be omitted.

*Sections 103-107*.—A ryot is at present allowed to deposit rent in the Collector's office on his verified statement to the effect that the landholder's agent has refused to receive the amount tendered to him, and that the amount is all that is due by the ryot up to the date of deposit. Nothing can be more reasonable than this provision. The Bill, however, proposes changes in the matter of deposit of rent which are unjust to the landholders, and quite uncalled for by the circumstances of the case. It proposes to allow deposits of rent to be made if the ryot has reason to believe (without an actual tender) that his rent would not be accepted; or if he is unable to obtain a joint receipt from all the co-sharers of a property, if he entertains a *bonâ-fide* doubt as to who is entitled to receive the rent. The Bill would therefore make the ryot the judge of his landlord's title and of his inmost intentions. It would give the ryot the power to convert the Collector's office into his landlord's kutcherry, and to compel his landlord to bring an expensive suit to establish his title against any person of the street who the ryot may choose to think has a rival title in the property. The proposition is so opposed to all recognised principles of law, and so dangerous in its effects, that in providing for interpleader suits by stakeholders the Code of Civil Procedure has expressly (section 474) excluded tenants from the category of persons who as stakeholders may compel rival claimants to interplead in a suit in court. The immediate effect of this would be to empower the Collector to assume the functions of a civil court, and adjudicate in an informal, but quite effective, manner regarding rights to one's property on the issue of a few rupees, and put the actual possessor out of possession on the alleged right of third parties. The Bill, moreover, would give a ryot much greater rights than what the Procedure Code gives to any other stakeholders. It would save the ryot from the expenses of a suit, but allow him to compel his landlord to plunge into an expensive and, in most cases, fruitless litigation. Provisions like these are calculated simply to breed ill-feeling, create animosity, harass both the interested parties, and give rise to endless litigation.

The provision for the service of notice on landholders is anything but satisfactory. In most cases no personal notice would be served, and the landholder, however poor he may be, is expected to have an agent always present at all the revenue offices of the district, to inform himself of the fact of deposit by any ryot from the notification required to be affixed at the revenue office. The provision for payment of the amount deposited is equally objectionable. The revenue officer may pay the amount to any person he thinks entitled to get it, and then the party aggrieved may recover the amount by a regular suit. In matters like these, in which the rights of parties are not involved, and in which legislation may go a great way to foster good feeling between the parties, a provision which will unnecessarily set class against class is wholly unwarrantable. The present law relating to deposit of rent is about as good as a law can be. If a time be fixed within which notice of deposit should be served on the landholder, or if a provision be made for the transmission of the money by a postal money-order to the landholder, all the improvement that it needs will have been made.

*Section 117*.—This section provides that if the landholder interferes with the cutting of produce in any way he shall be deemed guilty of criminal trespass. The objectionable nature of this section will be discussed in considering section 166 on distraint.

*Section 119*.—This section provides that the rent of no non-occupancy, or korfa ryot should exceed  $\frac{1}{10}$ th of the value of produce of the land. As a matter of fact a much larger ratio is paid, not only by such ryots, but whole communities of occupancy ryots in several districts. This arbitrary limit, fixed in utter ignorance of existing facts and circumstances, is wholly unwarrantable. It militates against the express views of the Secretary of State, who has stated that a landholder should have the power of letting land which comes to his possession "at any rent he may obtain," and while it restricts the right of the occupancy ryot as regards his under-tenant, it leaves the under-tenant of the second degree entirely at the mercy of his superior tenant.

*Section 123*.—With reference to this section it is necessary to mention that both Sir George Campbell and Major Baring classed some so-called impositions under the head of *abwabs* or illegal cesses which are no *abwabs* at all. The *selamies*, for instance, which a landholder gets from a ryot for making excavations and taking earth for making bricks, for hewing trees, for excavating fish-ponds, &c., are not impositions in any sense of the term, but con-

sideration money for special privileges, which he is entitled to exact on every equitable ground. These acts of the ryot deteriorate the letting value of the land, and are therefore such as landholders are lawfully entitled to receive compensation for. Such selami or compensation landholders have in several cases recovered by suits in court. Indeed, the words *abwab* and *makhat* used in the section would not have covered them at all, but from the fact of some such payments being made annually or at recurring periods, or so long as the special advantages are enjoyed; and because the concluding part of the section declares all additions to the actual rent to be illegal, and in the next section impose a money penalty. It cannot and should not be the intention of Government to prohibit special charges for special benefits; and it is necessary therefore that the term *abwab* should be clearly defined, and exceptions should be expressly made with regard to such compensatory charges. In several places the imposition of *abwabs* has taken the place, and superseded the necessity, of enhancement of rent. It is in fact a moral adjustment of rent in consequence of the increased value of produce, and is in that light not so objectionable as it is supposed to be. The only other remark which need be made with reference to this subject is, that our legislators are evidently ignorant of the fact that what is called the *mathai* is a village fund raised by ryots for their own behoof, and not a fund raised by the landholder for his own benefit. The fund is made up of small contributions from all the ryots of a village, and is spent under the direction of the *punchayet* or committee of *mundals* of the village in *churruck* or other *poojals*, in paying annual perquisites to the police, in village festivities, &c.

*Section 125.*—If occupancy holdings be made transferable by sale, they should be declared hypothecated like permanent tenures under the present law, for the rent payable in respect of them instead of the rent being made a first charge on them. The effect of the proposed change in the law would be, that the landholder will be reduced to the position of a first mortgagee, and that by reason of a legal recognition of other charges on the tenures the sales would fetch very inadequate prices, much to the loss of all parties concerned, and ultimately of the landholders. Of what value would this declaration be to the landholder when any other sum due by the tenant may be made a first charge on the tenure, as section 218 does in regard to money due to under-ryots.

The primary charge on the land is the revenue due to Government, for argue how one will, the security of the rent is the security of the revenue, and every provision of law which makes the rent insecure reacts on the revenue. Doubtless the immediate sufferer will be the landholder, who will have, so long as the loss does not swamp all his profits, to make good all losses from his private resources; but the injustice of the act which brings on such a shifting of responsibility cannot but be patent. In the old laws special provision was made to prevent the permanent alienation of land on low, or nominal, or no rent, lest such acts would ultimately tell against revenue, and the principle which was sound then, has not lost its force in the present day, though the recent rise in the value of the property may not make the Government apprehend any immediate evil to its own interests.

*Section 127.*—Although as a matter of fact none of the improvements, beside, dwelling-houses, mentioned in section 126, are ever made by ryots, they should not be vested with a legal right to excavate tanks or take earth for making bricks for the walls and plinths of his own house without the permission of the landlord, and without payment to the landlord of an adequate fee or selami. In most agricultural villages excavations made in the land reduce its value, and land covered with water is always let at a much lower rent than dry land. If a ryot relinquishes a holding in which he has cut a tank, it rarely fetches the same rent which was previously paid, and the loss to the landholder is great if the relinquishment is made several years after the excavation, when the tank has partially silted up, and is unfit for cultivation on the one hand and for storage of water on the other.

*Section 128.*—The power which this section gives to ryots not having a right of occupancy of building houses and out-offices on the land without the permission of their landlords, of compelling their landlords to make improvements, and of making the improvements themselves in default of their landlords, is inconsistent with the very notion of such a tenancy. It would confer on them a right which not even occupancy ryots enjoy at present.

*Sections 129-131.*—The provisions for the award of compensation for improvements made by ryots are altogether foreign to this country. Improvements are rarely made by ryots. Nothing is more true than what fell from His Excellency the Viceroy on this subject in the course of the debate on the Central Provinces Tenancy Bill. All these provisions should therefore be omitted. Some of the detailed provisions regarding compensation for improvements are discussed below.

*Section 129.*—This section provides for the award of compensation to ryots for improvements made by them. In most cases the amount of outlay would be more than repaid by the advantages which the ryots would enjoy by reason of such improvements, and it would in such cases be unreasonable to give them any compensation at all for such exhausted improvements.

The limitation prescribed in this respect by the Rent Commission was an equitable one. They suggested that no compensation should be awarded after a certain number of years from the making of the improvement.

*Section 131.*—With reference to the remarks made under section 129, the time during which the ryot has enjoyed the benefit of the improvements should be taken into account in determining the amount of compensation.



*Section 133.*—The landlord's right to measure all the lands of his village should be unrestricted, and the exception suggested in this section with regard to revenue-free lands should be omitted. How would a landholder right himself, when a revenue-free holder has encroached upon and appropriated adjacent mal lands, if he is not allowed to measure such lands? The present law places no such restrictions in the way of the landlord.

*Section 135.*—This section provides for cases in which a ryot occupying land refuses to attend the measurement and point out the boundaries, but the Bill takes no notice whatever of the important class of cases provided for by the present law, in which the landholder, usually a new purchaser, is unable to ascertain the names of the ryots or persons who are in possession of particular holdings in his estate. In such cases a landholder is placed in a situation which entitles him to as much help from a public officer as in any other. It is a situation which purchasers of estates and tenures at auction sales are frequently placed in. The Bill should provide for such cases, as well as impose penalties for determined attempts on the part of the ryots to thwart the Collector's attempt at a measurement of the land.

*Section 139.*—The landholder is required by section 91 to give six months' previous notice even to a tenant-at-will, before he can apply for his ejection. In common fairness the ryot should give previous notice of an equal period before he is allowed to relinquish his holding. This section prescribes only three months' notice.

*Section 140.*—For reasons stated with reference to section 46, the time should be reduced from one year to six months. If absence for one year from the village be an unreasonably long time in the case of an occupancy ryot, how much more so must it be in the case of a tenant-at-will before the landholder is permitted to let the land to another. The section amounts practically to the declaration that a landholder should forfeit a year's rent for every runaway tenant.

*Section 142.*—A provision which gives the owner of a minute fractional share in a property, or a single ryot the right of applying to the District Judge for taking it out of the hands of the proprietors thereof and placing it in charge of a joint manager, would be productive of very great mischief. Such an interference with the rights of private property can be justified only on the ground of public good, and it is only in exceptional cases that a District Judge should be empowered to appoint such a manager, but a provision empowering him to do it whenever a dozen ryots represent that such a course would lead to public convenience, or the owner of  $\frac{1}{16}$ th share represents that it would conduce to his benefit, would be a most unwarrantable and officious piece of legislative interference with private property. The most objectionable feature of the law is the power it virtually gives to the Judge to adjudicate questions concerning possession in an indirect manner and without due precaution. The proviso attached to the section is intended to serve as a safeguard; but as in all disputes of the kind the real contention will be about possession, either the law must fail, or the Judge must take up the question of possession in an indirect manner. Much of the objectionable character of this provision would be removed if it were provided that no joint manager should be appointed, unless the owners of more than half the share of the property apply for the same.

*Section 151.*—The circumstances which would justify the removal of a tract of country from the jurisdiction of the ordinary courts, and placing it for the purposes of settlement of rent under the jurisdiction of revenue officers, must be of an exceptional character. The first ground therefore on which this section would allow such a removal is very objectionable. Let the Local Government have the power of ordering such a transfer when an agrarian disturbance is threatened or when settlement in a khas mehal is to be effected, but it would be dangerous to give a number of landholders or a number of tenants the right of applying for it.

*Section 164.*—For reasons above stated no record of rights should be undertaken in any tract of country on the application of landholders and ryots. The first ground laid down in sub-section 2 of this section should therefore be omitted. If it were allowed to stand, it would be in the power of the ryots of any village to ruin their landlord by compelling him to meet all at once their claims to fixity of tenure and fixity of rent, and such other rights as they might choose to claim.

*Sections 166 to 187.*—Distrain of crops for the realization of rents is an indigenous institution of the remotest antiquity. It enables the landholder to collect his rents by the agency of his permanent establishment, without adding in the least to his own expenses, or saddling any cost on the ryot. It prevents the ryots, on the other hand, from cheating their landlords of their just rents, and in so far acts as a check to fraud and improvidence. It is only in rare cases that the power has been abused, but an abuse of power in matters relating to distraint is so easy to prove, and the penalties for offences committed in connection with it are so heavy, that the law might be left safely to vindicate itself. In Bengal at least, cases of abuse of the power of distraint have been very exceptional. It was the majority of the members of the Rent Commission who, labouring under an error, assumed the institution to be an offset of the English law, and suggested a radical modification of it on purely theoretical grounds. The framers of the present Bill have improved upon the alterations in the law suggested by the Rent Commission, and drafted under the head of Distrain a number of provisions which not only bear no resemblance to the institution of distraint, and amounts practically to a total abolition of the law of distraint, but actually deprives the landholder of even some of the rights which an ordinary creditor enjoys

under the law of the land. Distraint has always been understood to be an act of a landlord or creditor as distinguished from attachment, which must be the act of a constituted authority. But the Bill provides that if a landholder wishes the crops of a ryot to be distrained for recovery of his rent, he must make an application to court for the purpose; that such an application must contain all the particulars required for plaints, if not more; that it should be signed and verified like a plaint; that the amount of arrears should be proved as in suit for arrears of rent; that the court may then either admit or reject the application; and that if admitted, an officer of the court would be deputed to distraint the crops. Where, in the first place, is the necessity of laying down all these elaborate provisions, when it is open to the landholder to have, like any other plaintiff, the crops of a defaulting ryot attached before judgment under section 483 of the Code of Civil Procedure, immediately after bringing a suit for recovery of rent? What facility would the Tenancy Act give the landholder over the ordinary procedure of civil courts when he would have to pay the court fee, adduce evidence, and pay the expenses of attachment all the same? What inducement would there be to the landholder to apply for such an attachment in regard to a poor ryot paying a small rent, when the costs of suit and attachment are likely to eat up the whole value of the crops, and of what benefit would these provisions be to any ryot who would be thus unnecessarily saddled with a large amount of costs? Consistently with the other provisions under this head, the Bill provides for heavy penalties and punishments for certain acts in connection with attachment of crops. But why should any penalties be at all imposed beyond what the ordinary law provides for attachments made by order of the court, by an officer of the court, and after proof to the satisfaction of the court of the justice of the claim?

The primary object of an amendment of the Rent Law, according to the repeated avowal of the Bengal Government, was to provide facilities to landholders for the realization of rent, and the section under notice deprives them of one important facility they now possess, without supplying them with any adequate substitute.

*Section 194.*—It is not unfrequently that defendants purposely allow judgment to go by default in rent suits against them, and then after they have seen the plaintiff's cards, apply for a revival of the suit on the ground of non-service of summons upon them. Let every precaution be taken for the proper service of the summons, but let not such applications for revival be recklessly entertained, as at present. The proposal to have the summons served by post under a registered cover would be a great improvement on the present procedure.

*Section 198.*—Section 109 provides for damages to be awarded to the landholder for wilful default in the payment of rent. A suit for the recovery of such damages should be classed in the same category as regards appeals, as a suit by a ryot for the recovery of a penalty. If there be no appeal in one case, there should be no appeal in the other.

As regards rent suits, it is a great mistake to suppose that suits for small amounts are of no moment. They form the largest number of suits in the courts, and they are often suits of great importance. In suits in which the amount of rent annually payable by a ryot is in dispute, the High Court has held that no appeal lies to that court, inasmuch as no question of title is involved, but in such cases an appeal should be allowed in the interests of both parties, and the proposal to make the decision of the first court final in suits in which the amount involved does not exceed Rs. 50, should be abandoned.

*Section 199.*—In suits for recovery of rent, where the ryot pleads the title of a third party, the payment of rent into court should be made obligatory on the ryot, and not left as a matter of discretion to the court. The principle which underlies this section is, however, radically unsound. Both by the English and Indian laws a ryot is estopped from denying the title of his landlord (Indian Evidence Act, section 116). A ryot who denies his landlord's title forfeits his own title to the land, which lapses to his landlord. The effect of this section would, however, be to hold out an encouragement to the ryot to deny his landlord's title, inasmuch as he would thereby evade payment of rent at least for a certain time. Matters like these should be left to the decision of the constituted judicial authorities, and not made the subject of arbitrary legislation.

*Section 201.*—Sub-section 2 gives the court a discretion to fix the date from which a decree for enhancement of rent should take effect. The rule laid down in sub-section 1 is reasonable enough. The Bill provides for so many and so diverse limitations in the way of enhancement of rent, that it would be a matter of great difficulty to a landholder to get enhanced rent. Why unnecessarily increase the difficulty by giving the court an arbitrary discretion which will place an additional obstacle in his way? Were it the policy of Government to prohibit enhancement, it would be well openly to declare it; but as we believe such is not the case, we consider the difficulties thrown in the way of enhancement are, as they would practically make it, not worth the while to seek it by reason of the trouble, annoyance, and heavy cost, unsound on economic grounds, and unfair towards the landholders, who have the right of protection, is common with all other classes of the community.

*Section 206.*—The time within which the money due, either to the landholder or to the tenant, in connection with a decree for ejectment must be paid should be limited. It should not exceed 15 days.

*Section 208.*—Item (f) of this section is very objectionable. It is an encroachment on the rights of auction purchasers at sales for arrears of rent which they have all along enjoyed. The effect of item (f) would be to deprive the purchaser of the right of avoiding

a mookurree of other permanent lease created by the defaulting tenant. Such a provision is opposed to the fundamental principles which regulates sales for arrears of rent, viz., that they restore the tenure to the condition in which it was at the time of creation, and give it to the purchasers free of all incumbrances created by the out-going tenant. Section 66, Act VIII of 1869, provides for the sale of tenures free of all such incumbrance. The proposition is also one which would give rise to fraud and litigation, inasmuch as every defaulting tenant will try to make the best of their incumbency by creating mookurree leases in favour of relatives and dependants.

*Section 210.*—The provision for the sale of tenures for arrears of rent subject to registered incumbrances in the first place, and then, if necessary, free of such incumbrances, would simply increase the costs of litigation, which will ultimately fall on the ryot, deter intending purchasers from bidding at sales, fetch inadequate prices for the tenures, and thus cause material injury at every step, both to the landholder and the ryot. The sale should always be, as at present, free from all incumbrances.

*Section 215.*—This section gives the Local Government the power of extending to occupancy holdings the provisions of section 210 regarding tenures. As observed above, it is a very objectionable proposal. Much more so is it in the case of occupancy holdings, the minute subinfeudation and divisions of which should certainly not be allowed to be perpetuated.

*Section 218.*—This section gives a sub-tenant of the first, second, or third degree a right to stop the sale of the superior tenure or holding by paying in the amount of arrears of rent due on account of that tenure or holding, and makes the amount so paid a first charge on the tenure or holding. The landholder's lien on the land should be paramount under all circumstances, but this section would materially affect it. In the case at least of occupancy holding the amount paid by a sub-tenant to protect the holding from sale should be made a personal debt of the defaulter, as otherwise of what use would be the lien which section 215 declares the landholder to possess in the land?

The attempt to incorporate in the proposed Act the law relating to patni tenures should be abandoned. Sections 36-42 and Schedule III should therefore be omitted. The present law on the subject is a master-piece of legislative wisdom. It has stood the test of experience of more than 60 years, and has always been found to be a complete and satisfactory law on the subject.

#### APPENDIX A.

*Memorandum by MAHARAJA SIB JOTINDRA MOHUN TAGORE, BAHADUR, K.C.S.I., on the subject of affording facilities for the realization of rent.*

I think it will be admitted on all hands that the Government, which has recourse to the rigorous sun-set law for the realization of its revenue, ought to offer equal facilities to the zamindar for the collection of his rent. The Permanent Settlement Regulations have repeatedly recognized this obligation on the part of Government, and the earlier laws relating to the recovery of rent by zamindars were framed with that object. Abuses having, however, crept into the old system of collection, Act X of 1859 was enacted, and the difficulties interposed by the new law were aggravated by Act VIII of 1869 (B.C.), by which the trial of rent-suits was transferred from the revenue to the civil court. A suit for the recovery of arrear of rent is now a regular civil suit. It takes ordinarily from four to six months, sometimes a longer period for disposal, and while the zemindar is engaged in protracted and harassing litigation, he is obliged to meet the Government demand from his own pocket, that is to say, by borrowing money where the arrear is heavy and he has not independent means to pay the revenue. The ryot is also a loser, under this system, for as a rule he is cast in an arrear suit, and has consequently to bear ultimately the costs of the suit and interest upon the rent due, not to mention the trouble and harassment to which he is equally subjected. The majority of the rent-suits are decided *ex parte*, and under the present procedure both the zemindar and ryot suffer.—the zemindar by reason of the delay involved in going through the forms, and the ryot in consequence of the costs which necessarily devolve upon him.

Under the circumstances a law for the recovery of rent which would be at once cheap, speedy, efficacious, and just to all parties has become absolutely necessary. Having been invited by His Honor the Lieutenant-Governor to suggest a scheme for the amendment of the law in this respect, I venture to submit the following:—

*Firstly.*—Without disturbing the present rent kists or instalments, which vary according to local usages, I would declare a specified quarter-day for the payment of the quarter's rent, failing which a suit for arrear shall lie. Where the kists are monthly, as they are for the most part, the zemindar shall be entitled to receive the rent according to monthly instalments, but if the monthly instalments be not liquidated by the quarter-day aforesaid, he shall be competent to institute an arrear suit.

*Secondly.*—In default of the quarterly instalment as suggested above, the zemindar or the rent receiver shall be competent to make an application to the Collector, setting forth the name of the defaulting ryot, description of the holding, and the mouzah in which it is situated, the amount of the annual rent, the amount due, and the period for which the same may be due, with a statement of accounts giving details of the jumma or rent, the instalments in which it is payable, and the amount paid or payable by the ryot up to the end of the quarter. But the application and the amount should be verified by the naib or gomastha as the case may be.



*Thirdly.*—With a view to save costs and trouble, the zemindar should be allowed to sue the defaulting tenant collectively, by an application written on a stamped paper of 8 annas value. This sort of a collective suit is permitted under the North-Western Provinces Rent Act, and also under the Agrarian Disturbances Act. I recommend a stamp fee of 8 annas for a collective suit in order to lighten the burden upon the ryot.

*Fourthly.*—On receipt of the application the Collector should serve a notice upon the defaulting tenant or tenants, calling upon him or them to pay arrears due with costs up to that stage, or to deposit the sum in the Collector's kutcherry, if he or they should contest the demand. The notice should state that, if the payment or deposits be not made within fifteen days from date of service of notice, the tenure of the defaulter or defaulters shall be sold by public auction on the day to be fixed in the notice, which should be served by a single peon upon all the defaulters residing or holding land in the same village, *firstly*, by affixing it in the zemindar's kutcherry, if any, in or near the mouzah; *secondly*, at the police thana, if any, in as near in the mouzah; *thirdly*, in some conspicuous part in the village; *fourthly*, by proclamation or beat of tum-tum in the village; *fifthly*, by affixing it on the land on account of which the rent is due. The serving peon shall procure the signatures of three substantial residents residing in the neighbourhood in attestation, of the notice having been brought and published on the spot. In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kutcherry of the nearest Moonsiff, or, if there should be no Moonsiff, to the nearest thana, and there make a voluntary oath of the same having been duly published. Certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

*Fifthly.*—The sale of tenures should not be stayed unless the arrear claimed be deposited. In case the defendant make the deposit and propose to contest the suit, the Collector should try it under the procedure laid down in Act VIII of 1869. The zemindar, or the person claiming the rent, shall be entitled to take out the deposited amount on giving proper security.

*Sixthly.*—Should the Collector find that the demand is not just, or is in excess of actual amount due, he should levy a fine upon the claimant, not exceeding twice the amount so claimed, in addition to all cost, and should make over the damages so realized to the defendant by way of compensation. Should it appear that the accounts made up for the zemindar have been falsely or fraudulently prepared by the attesting servant of the zemindar, he, the servant, shall be liable to a criminal prosecution.

I propose the above procedure for the realization of rent from ryots having occupancy or mookarari rights. I am aware that under the present law occupancy tenures are not saleable or transferable, but in many districts the usage sanctions sale for arrears of rent, which is largely resorted to in practice. I would legalize the sale to that extent. The purchaser shall have the same right and interest that the defaulting tenant possessed. I should observe that the existing law enjoins the eviction of the occupancy ryot in lieu of the sale of the tenures, but the courts are generally reluctant to enforce this provision, inasmuch it throws the ryot adrift. Under my scheme the ryot may, if he likes, buy in his own tenure, or if it be sold to a third party he will obtain a fair value for it.

It will be observed that I proposed to place the whole procedure in the hands of the Collector. But should the agency of the civil court be considered preferable, I would suggest that the proceedings in the civil court should take place only when there would be contention, and after the deposit has been made in the Collector's kutcherry by the defendant. The procedure of the civil court should of course be the same that has been prescribed in Act VIII of 1869 (B. C.).

20th August 1876.

P.S.—With regard to non-occupancy tenures, the preliminary procedure suggested above will apply: in case the arrear adjudged be not paid, the defaulter should be evicted.

#### THE PETITION OF LANDLORDS OF BENGAL AND BEHAR TO PARLIAMENT REGARDING THE BENGAL TENANCY BILL.

##### 1.—*The Petitioners' Stand-point.*

The constitution of the Anglo-Indian Government at the close of the last century deprive the people of India of all share in the deliberation and adjustment of their affairs by it. "It had been customary," as Parliamentary records shew, "for the landholders of distinction, and other principal inhabitants, to maintain, in proportion to their rank, an intercourse with the ruling power."\* This custom was brought to an end under the British rule, and the zemindar "was referred to the Code of Regulations as the only protection any longer necessary to maintain him in the possession and enjoyment" of his benefits.†

But the Regulations are modified from time to time, and not seldom the very policy of the laws is changed. And then the zemindar and his fellow subject are liable to lose, and have at times missed, what he once possessed. They still possess the right of making petitions, but that is often found insufficient, so that the last resource left to them is to appeal to Parliament. Hence the petition to which this is intended to form an explanatory note.

The petition comes from subjects who are quite unrepresented; it comes to their Sovereign exercising absolute powers over them; and it comes from a quarter of the globe afar. The

\* 5th Report of the House of Commons, p. 54.

† Ditto ditto, p. 55.

landholders of Bengal belong to no party in England, and it would be their misfortune if party considerations should affect their interests in Parliament. In this regard they labour under peculiar disadvantages owing to the transfer of Government from the East India Company to the Crown. But it is still more unfortunate for them, that somehow or other questions relating to Ireland have just now got mixed up with their affairs in India. Indeed, it is apprehended that the intense agitation in the United Kingdom on these questions may have largely influenced, if not actually originated, the changed policy against which the present appeal is submitted to Parliament.

The position of the petitioners is thus extremely delicate. But it is hoped that the wide difference between a European and an Asiatic country—an integral part of the kingdom and a far off dependency—will not be overlooked, but will, on the contrary, serve to remove any prepossessions which might otherwise prevail. Changes which may be justified by the constitution of Parliament, or by the peculiar circumstances of Ireland, or Great Britain, or Europe, may not be fitly transported to a distant and conquered country like India, and among a people whose feelings, views, habits, customs, and social conditions are, in the natural course of things, so widely dissociated from those of the sovereign power. Besides, in Ireland, troubles traced to a long and painful history may have justified the measures recently adopted by Parliament: in India nothing of the kind has occurred, or is to be apprehended for very many years to come.

The landlords of Bengal do not claim or possess any class privileges over their tenantry; their relation is not derived from conquest or political ascendancy of any kind, as was the case in Ireland, nor is there any the least distinction of race between the classes said to be arrayed against one another. Hence they feel aggrieved that a class question should be raised, between two sections of the same community who are constantly passing from one to the other, and many of whom belong to both sections in relation to different individuals. Property-questions certainly exist, as they do exist, all over the world; but the legitimate remedy for differences arising from such causes is, of course, impartial dispensation of justice between individuals. They do not suggest a repressive policy to be directed against the topmost section, really or ostensibly for the benefit of the lowest order of society. Such a policy, dictated at best by sentimental reasons, cannot but be subversive of the hitherto prevailing course of legislation and system of land tenures, and a source of serious mischief. Such a policy and consequent legislation of vast magnitude, and those adopted and conducted without any concert with the people so deeply to be affected thereby. Such a change, advocated only by gentlemen belonging to a foreign race, who again, by their tenure of office, are quite cut off as much from the traditions of their predecessors as from local experience of their successors—the landholders of Bengal firmly deprecate and respectfully protest against. Such revolutionary changes, they contend, urgently calls for Parliamentary interference, and their prayer is that further progress of the Bill entitled “The Bengal Tenancy Bill” may be stopped by order of Parliament.

#### 2.—*Revolutionary character and inexpediency of the proposed measure.*

The foremost contention of the petitioners is that the changes proposed will injuriously affect private property in land of great value: in fact the bulk of all that exists in the country. It will be shown gradually how far the policy of Government in this respect is being revolutionized, and to what vast extent the property is going to be re-distributed, and how, to attain these objects, disabilities of the most complicated kind are going to be imposed upon the people. But the general truth of this contention will be manifested by the opinions of responsible officers of Government, as given in the following extracts:—

Mr. Ravenshaw, Commissioner of the Burdwan Division, reporting on the subject some time between July and December 1880, says:—

“I am not in favour of revolutionary measures, and I think that legislation should rather take the form of consolidating the existing law and rulings than re-constitution of the relations between rent-payer and rent-receiver, which must produce an increase rather than mitigation of existing evils.

“For all practical purposes, it would suffice to re-enact the law with as little radical change as may be possible, with reference to the conflicting interests concerned.

“As regards the existing law, nothing can be more precise and clear than Mr. Field’s Digest. The present law has been, with little variation, in force for 20 years; and so far as my experience goes, it needs only slight modification and simplification to adapt it to the real wants of all parties.”\*

Mr. Beames, successor to Mr. Ravenshaw in the same office, but with experience derived from another division of the province, says, under date the 26th April 1881:—

“From the experience I have had of the very great difficulty which the officers of Government feel in managing wards and attached estates in the Chittagong and Dacca Divisions, I am convinced that the position of the zemindar (landlord) in those parts is a precarious one. As far as I am able to judge, it will be rendered more so if the present Bill, moderate as it is, becomes law.

“After tacitly acquiescing in the assumption and exercise of certain powers by the zemindar for nearly a century, it is rather late in the day to discover that it was never intended that he should have those powers, and that neither past history of the land question, nor the legislation under British rule, justifies him in exercising them. That, in fact, his status is, and has all along been, understood to be something very different from what it practically has been.

\* Report of the Government of Bengal on the proposed amendment of the Law of Landlord and Tenant in that province, Vol. II., p. 162.

"I am not aware that any section of the community in Bengal has suggested or manifested any desire for new legislation on the rent question. If there is really a want for it in Behar, it would, perhaps be sufficient if a law were passed giving the inhabitants of that province the relief they desire without disturbing another province where no change is called for."\*

Mr. Smith, Commissioner of Orissa, says:—

"Nearly a hundred years have passed since the time of the Permanent Settlement. The power conferred on the zemindars of selling their estates has been largely used, and money has been largely invested in this description of property with regard rather to existing usages than to old and forgotten minutes in Government offices. Neither the ryots nor the zemindars of the present day have, as a rule, had much regard in their dealings to the minutes of Lord Cornwallis, although the usage of the time under which the ryot is to pay only a fair and equitable rent is in accordance with its spirit.

"It appears to me that any legislation to be now adopted should be directed towards facilitating the ascertainment of what the fair and equitable rents are, rather than to any extensive adjustment and alteration of existing relations, and a measure of this sort would, I have little doubt, prove acceptable to both tenants and landlords."†

Mr. Monro, Officiating Commissioner of the Presidency Division, speaks still more strongly. The following extracts are given in order to avoid longer quotations. The Report is dated 31st December 1880:—

"So far as the practice of Government is concerned, I fail to find in their dealings with the ryots upon Crown lands any indications of the recognition of a living tenant-right among any class of ryots save and except those known as khodkasht (resident) or kudeemu (ancient).

\* \* \* \* \*

"I do not here stop to consider the various modifications in the rights of zemindars effected by Act X of 1859. It will be sufficient to mention that sundry very important modifications of these rights were introduced by that Act; that such modifications were strenuously resisted as infringements of the rights of zemindars under the perpetual settlements; and these modifications have, although unwillingly yet practically, been accepted by zemindars as the basis of the relations between them and their tenants.

"The proposed Bill (i.e., the one prepared by the Rent Commission), however, goes very much further than Act X of 1859. It further curtails the rights of the zemindars."‡

\* \* \* \* \*

"I cannot see that it is just to them, whatever may have been their failings, to deprive them of rights \* \* \* which, so far as I know, have been believed universally to attach to the position of a landholder in this country. Nor does it seem to me to be just to declare the existence of rights on the part of ryots \* \* \* which, so far as I know, are not claimed as belonging to them by the ryots themselves.

"The proposed Bill seems to me, on the principles above referred to, to contemplate grave infringements on the rights of zemindars as hitherto recognised; to destroy such recognised rights and to give the landholders no compensation for such damage done to their interests. It seems to me moreover peculiarly unjust to contemplate such restrictive legislation with reference to the rights of zemindars, when the whole tendency of recent legislation on the part of Government has been to throw more responsibilities on the landholders in the way of providing funds for improvements connected with lands."§

Lord Ulick Browne, Commissioner of the Cooch Behar and Rajshahye Division, says, under date the 1st February 1881:—

"I think such important changes, deeply affecting the rights and pecuniary interests of a large and important class in a vast country, should only be made on very strong grounds, such as, for instance, the grounds advanced by Mr. Gladstone when introducing a somewhat similar measure for Ireland in 1870, when he supported his proposals by urging that, as good general laws...had failed to dispel the serious ill-feeling of the mass of the population of Ireland towards England and the Government of the United Kingdom, it was necessary to take an extreme step in a direction specially acceptable to that population, in the hope that it would put an end to what was always a serious political danger. No strong and special grounds, political or other, exist in the present case, nor are they asserted by the Commission, who, indeed,.....seem.....to be unanimous in holding what is a nearly universal opinion, viz., that the ryots of Bengal are stronger than the zemindars."

In the opinion of His Lordship the proposed law would be in accordance solely with the "individual views" of some "gentlemen (the majority of the Rent Commission) as to what the respective positions of landlords and tenants ought to be; and a key to their general views...may, perhaps, be found in their adoption, in the face of Lord Cornwallis' declaration, .....of the politico-economical axiom, that the land of the country is the property of the people of the country." Further on he says:—

"Not only there is no general feeling of discontent among the ryots, in whose favour it is now proposed to sacrifice the zemindars, but that there is not even a partial feeling of that nature, and that the ryots of Bengal, Proper, at all events, are, as a body, in a prosperous and contented condition.....Lastly, I think the passing of such measures into law would

\* Report of the Government of Bengal on the proposed amendment of the Law of Landlord and Tenant in that province, Vol. II, p. 363.

† Ditto ditto, Vol. II, p. 200.

‡ Ditto ditto, Vol. II, p. 219.



create no little discontent among the zemindars as a body, though being loyal and well-affect-ed, they will bow to the decision of Government."\*

The Officiating Commissioner of the Dacca Division, writing on the 27th December 1880, says :—

"Innovations in the law and the creation of principles foreign to the customs of the country are, I maintain, strongly to be deprecated, unless their urgent necessity can be demonstrated."

Speaking of Chapter IV of the Bill of June 1880, he says :—"I see no reason for the innovations proposed in this chapter, which would create a class of ryots never before in existence."†

Thus, it will be seen, the Commissioners of the western districts grouped under Burdwan, of the Eastern districts under Dacca and Chittagong, and of the Central districts under the Presidency, Rajshahye and Cooch Behar Divisions,—all the Commissioners of Bengal Proper in fact, besides Orissa and other places, have, in terms more or less explicit, recorded their opinion that the measure proposed is decidedly of a revolutionary character. And it is well known how the present Chief Justice of Bengal has also borne testimony to the same fact in a minute separately given to the public (dated 6th September 1882).

### 3.—The Permanent Settlement.

The petitioners do not enter into the history of the permanent settlement. But the landlords of Bengal cannot help observing that their mortification becomes naturally great when they find even a reference to the documents of their title is repelled with pleasantry‡ or displeasure by representatives of the Sovereign power. The Law Member of H. M.'s Government in India has no time to enter into an exhaustive inquiry into the meaning and effect of the permanent settlement, and yet the legislature has taken up the functions of judicial authority, in order to decide the question of right determined by that settlement as between the Government, the landlords and cultivators of the soil in Bengal!

The petitioners have not been shewn the danger which may have rendered expedient the present extreme measure, and the arguments adduced are all the more painful to follow, because they are unsupported by facts, and still more because all forms of arriving at facts have been arbitrarily set aside.

It has been assumed that at the time of the permanent settlement three different parties were interested in the transaction, and that the authors of the measure settled and defined the mutual rights of only two of these, but put off for the future all questions as between the second and the third. "The ryots," says Mr. Ilbert, "were not consulted about the arrangement, and were in no sense a party to it, and, according to the most ordinary principle of contract, it could not affect any right which they then had, or might thereafter acquire."§

An immediate reply to this argument would be that, in the sale and purchase of slaves, the third party was never consulted; but in abolishing slavery in the West Indies, the British Parliament never adverted to it, and sanctioned ample compensation for the revocation of the contracts.

This extreme case apart, the question at the time of the settlement did not concern the alleged third party. As a matter of fact, the old proverb, "the lands belongs to the zemindar and the rent to the king"¶ would seem to point in quite a contrary direction, and to fairly bear out the daily experience of everybody, that the ryots have no right in the soil, except what is conferred by the zemindars. It is true that the Government reserved to itself the power of legislation for the protection and welfare of the ryots. But surely that did not imply the abrogation of the substantive law, or the rights conferred on the zemindars by the permanent settlement? The simple question is, whether the leading provisions of the Bill fall under the reservation referred to. And it is for Parliament to consider whether, in a matter like this, and especially when one of the parties interested appeal to the judicial wisdom of the United Kingdom, the executive authorities should ignore that appeal and instruct the legislature to enact a law suited to their extra-judicial opinions and at variance with other laws still in prevalence.

The well-known Sudder Judge, Mr. Hawkins, thus interpreted the permanent settlement :—

"It is a narrow and contracted view to suppose that the permanent settlement consists in nothing more than the obligation on the part of the zemindar to pay a certain amount of revenue annually to the Government. The settlement is a compact by which the zemindar engages on his part to pay a fixed amount of revenue to the State; and the State on its part guarantees to the zemindar, by means of its judicial and fiscal administration, the integrity of the assets from which that revenue is derived, and which in fact constitute the Government's own security for the realization of its revenue."

The contention of the petitioners is that, of the three parties—the State, zemindars, and cultivators—the first had, without consulting the other two, virtually plotted out the map of the country; that it then distributed the different portions to individuals comprising the second class, defined most accurately their respective liabilities to the State; and required them to respect any claims against them, such as might then exist, on the part of any individuals of

\* Report of the Government of Bengal on the proposed amendment of the Law of Landlord and Tenant in that province, Vol. II, p. 222.

† Ditto Ditto, Vol. II, pp. 144-45.

‡ Abstract of Proceedings of the Council of the Government, 2nd March 1883, pp. 89-90.

§ Ditto Ditto, p. 91.

¶ Hartington's Analysis. Extracts published from the Office of Superintendent of Government Printing, p. 8.

the third party. Nothing was left open for legislation as to the *substantial rights* of subsequent cultivators.

The Government, though a conquering power, sought at first to assimilate its position with that of a landlord, but as landlord it took every care to appropriate all that lay at its feet as conquerors. The main transaction undoubtedly concerned property in land. And there is no question that the State had made up its mind to forego for ever all its claims as landlord for a fixed annual return. But it had after all to make its choice between the two other parties in order to decide to which of them it should look for the money—call it rent, revenue or whatever you like. And the considerations incidental to such choice could not possibly be put off; nor was the sovereign power then so distinct as to allow of its foregoing as landlord any right which it was not necessary for it to give up.

The considerations alluded to may be distinguished in the following way, with a view to hold in contrast the revolutionary principles of the Bengal Tenancy Bill:—(1) Land occupied by cultivators; (2) land lying waste; and (3) land which might be expected to become vacant subsequently. It is wrong to suppose that the State took all the land in the country as a whole and legislated for revenue-payers and rent-receivers, leaving the question between rent-payers and rent-receivers perfectly undecided. At all events this is a question of fact, and cannot be decided *ex parte* by the supreme landlord, because that landlord holds the sovereign power.

Viewing the matter from the above point, it would follow that, if the State omitted to determine any question between landholders and cultivators, it could only have been with respect to the land which was occupied by cultivators, and held by their landlords. And the claims of these cultivators were respected for a special reason, *viz.*, because there were higher claims set up on their behalf, the claims, that is, to the permanent settlement which was made with their landlords. In respect of the other two descriptions of land, the landlords deny that the cultivators had any right whatever.

They could not possibly have had any such rights, and for the simple reason that they had no distinguishing features of character to form them into a class, and that they have never formed a distinct class of the kind. There have indeed been caste reasons precluding some people from the ploughman's work. But that has never led to the recognition in any persons to a preferential claim to the lease of any land going to be let out; and the proof for this contention lies in this, that no rules are known to exist to decide in such matters between rival applicants for lease. Village communities are said to possess an indefeasible right in the land, but village communities have been broken up in Bengal since long before the Permanent Settlement; and it would, besides, be most singular if, in the primitive communal system, the upper classes had no rights whatever, and the land had belonged entirely to the lower, *i.e.*, the cultivating classes in the country. In fact, where the village system has not gone out of use it was invariably the upper classes who held as well the village franchise, as the proprietary rights in all the village lands.

But even if the cultivators had any claims to the lands referred to—lands remaining or subsequently becoming vacant or waste—such claims must have been extinguished by the conquering power having laid hands upon them and made them over to the landlords of their choice. "In case of foreign invasion," records Lord Cornwallis, "it is a matter of the last importance, considering the means by which we keep possession of this country, that the proprietors of the lands should be attached to us from motives of self-interest" (Fifth Report, p. 492). It may be that the present motive to the proposed changes is something of this same kind. But its obvious inconsistency with the old policy would be sufficient to neutralise the effects of both, and thus the new policy of this kind would stand self-condemned.

As regards the lands of the then existing cultivators, the case was a little different; but different only in relation to the Government. If the Government of 1793 believed that the cultivators were "the actual proprietors of the soil," and yet accepted the zemindars as such, their action was a huge fraud. If they committed a mistake, it would be as great a wrong to relieve the State of its consequent responsibilities in the way proposed. Happily, neither of these theories is tenable. The truth is, the farmers of the permanent settlement believed the zemindars to have been, as they were in fact, the rightful owners. But situated as the Government then was, they tried to do all that lay in their power to serve the cultivators who had become, in some shape, rivals to the zemindars, in regard to the grant of the permanent settlement; and they laid down that the claims of these persons, as against the zemindars, would be duly considered by the judicial authorities then being appointed.

It is necessary to understand this point; for people are apt to be taken away by the comparatively irrelevant fact that the policy of granting permanent settlements has not been adhered to by the Government in administering the affairs of the North-Western Provinces, or of Bombay. The Madras settlements were earlier, and led probably to the claims on behalf of the cultivators. Thus the permanent settlement of Bengal, whether good or bad, as a piece of fiscal policy, whether right or wrong, as a political measure, was the result of mature deliberation, and to break it by roundabout means would obviously be worse from considerations of either kind.

The engagements of the time, it may be repeated, was made in respect of land, and not in respect of cultivating, as distinguished from rent-receiving classes; for it was the land which was made over to one or other of the applicants, and it was never that the members of any particular class had to be provided with land from the country by Government, or from the village by the landholders.

And as for that permanent settlement itself, the parties were at first, and only for once



chosen with reference to the history of their connection with the lands. But this was only when the new departure was to be made. And then, too, sufficient regard was shewn to all other sections of the community by the provision that, in the event of the estates being afterwards sold by the State or by the landlords themselves, all prior claims derived from such history would be entirely overlooked. And if anything more was necessary in order to further disarm the zemindars, it was accomplished by depriving them of the rights of primogeniture, of the functions of keeping the peace of the country and administering justice over the tenant classes, and of the power of levying taxes on cultivators and duties on trading people.

Mr. Ilbert says:—

"We have indeed been told that it was part of the bargain between the Government and the zemindars that the latter should not only be exempted from payment of revenue for lands which were then waste, but which might subsequently be taken into cultivation, but should be given full and absolute discretionary powers as to the mode of dealing with such lands, unqualified by any village custom or local usage. But it would require extremely strong and clear words to make an enactment conferring such powers."

The following, however, appears in section 31 of Regulation II of 1819:—

"Nothing in the present Regulation shall be considered to affect the right of the proprietors of estates for which a permanent settlement has been concluded to the full benefit of all waste land included within the ascertained boundaries of such estates respectively at the period of the decennial settlements, and which have since been, or may hereafter be, reduced to cultivation. The exclusive advantages resulting from the improvement of all such lands were guaranteed to the proprietors by the conditions of that settlement."

Whether or not these words "are strong and clear," the only "guarantee" now left to the landlords of Bengal is reliance on the high sense of justice of the British Parliament. For all but the last three lines of the above were cited in Council and found to fail.

The issues should be clearly defined in order to determine the question raised, and contemptuously put aside, by the chief authority for making just laws in the country. The issues are (1) the terms under which the then existing cultivators should hold their lands under the zemindars; (2) the mode of dealing with the lands then lying, or subsequently becoming, vacant or waste. It is never contended that anybody in the country ever enjoyed any right in land without paying rent or revenue for it, or that the tenants paid any rents for unoccupied village lands. The zemindars could always cultivate these latter lands by hired labour; and no one has come to dispute that even at the present moment. But they generally proposed to carry on the work through tenants, and hence arises the further questions—(a) Had any cultivators any preferential claim to the lease of any of these lands? (b) Were the terms of lease, when any was to be granted to cultivators, terms as to period and rent, subject to any restrictions? (c) And if so, were they of the kind proposed in the Bill?

The answer of the zemindars to all these questions being in the negative, the burden of proof obviously falls upon those who claim for the ryots rights of the kind proposed.

It may, however, be asked—Was the permanent settlement of so little consequence that it did not give to the zemindars even a presumable title to the free disposal of such lands, and that they should have to rebut a contrary presumption according to the stringent requirements of section 6 of the Bill? And is the legislature to be justified in simply suggesting a conflict of claims unknown to the people, and then authoritatively relieving the favoured class from all burden of proof? The cultivating classes had, it is said, a right to what is called *ryoti* or the tenants' lands. How then was the right to be determined with reference to each particular plot which had to be disposed of? Was the zemindar bound to prefer the resident over non-resident ryots? If so, would the question have to be decided by the judicial authorities, and meantime the land remain uncultivated? And if the judicial authorities were then relieved from the function of determining the limits of ryoti lands not in their possession, and the claims to such lands of individuals, members of the cultivating class, how is the function—one of very great pecuniary value—now going to be withdrawn from the landlord? The only question remains as to the terms on which the land was to be let out. But that is obviously distinct from the starting principle of the Bill,—a presumable right to the lease of such lands in people whose character, as a class, the legislature claims to have determined, unknown to them or their supposed antagonists—the landlords. A great deal has been built upon the alleged history of land tenures and the customary laws of this country. But the landlords only contend that the proper way to establish the facts and to test the laws is to submit them to judicial authorities, in order to have the points controverted by parties setting up an adverse position.

And the reference to customary law is the more singular, since the Bill brings within its purview affairs of great extent, but does not claim to consolidate, or even to have ascertained the customary law relating to those affairs.

Mr. Ilbert supposes that the permanent settlement served merely to determine who was to be liable for the land revenue, and that the exemption of waste lands from like charges leaves it open to the legislature to dispose of all lands falling vacant in future in the way it pleases. But the following considerations are urged against this astounding assumption, apart from the technical methods of interpreting the wording of laws, and from the controversy thereon raised and arbitrarily disposed of with regard to the Regulations of 1793.

The revenue charged under the permanent settlements, it will be remembered, was 1/4ths of the actual collections in each estate, and the remaining 3/4th of the total collections from the cultivating classes, called *malikana* (proprietors' dues) was due to the hereditary



ditary zemindar, whether he accepted the settlement or not.\* Even if the Government collected the rents from the cultivators by its own paid officers, it was bound to pay this right to the zemindars. In Behar, the origin of this system was untraceable even at the time of permanent settlement, and was supposed to be only hereditary pensions with which the "proprietors" had been "shelved" probably by the Mahomedan Government. And referring only to two divisions of Behar, this allowance to proprietors out of possession is reported to have amounted in 1871-72 to Rs. 82,078, from 3,126 estates.† This ought to have satisfied Mr. Ilbert that the zemindars were something better than the nondescript trustees they were sought to be made out by two of his speeches. Again, when in 1819 waste lands, not included in the permanent settlement, came to be disposed of by Government, it was not the cultivators, but the zemindars of the adjoining villages, who were recognised to have a preferential right to them.

The question therefore is, if the zemindars only collected the revenue for the Government, what was their remuneration for the work, and how were they compensated for the many bad debts from cultivators which, it could well be foreseen, they would have from time to time to write off? Add to this the well-recognised contingency of the remaining right of the collections having to be paid as *malikana* by a farming zemindar to a refractory *malik* (proprietor), who had a right to the permanent settlement? The answer is simple. The waste lands capable of cultivation (variously estimated from  $\frac{1}{3}$  to  $\frac{2}{3}$  of the entire area of the country) were explicitly pointed out for the one case, i.e., for the remuneration; and for the other, viz., the risks of collection, it was but just that landlords should recoup themselves by subsequent increments to the then existing rents. This liability of the State to remunerate the zemindar does not now seem even to be felt, but on the contrary it is argued that the zemindar shall not draw from unoccupied lands all that tenants might fairly afford to pay.

The so-called customary or *pergunnah* rates of rent were applicable only to the ryots whose supposed claims had been rejected by the Government at the time of the permanent settlements, who, in any case, could not have been *let into* possession under the authority of the permanent settlement, and as such might possibly claim a prescriptive title against the parties chosen as zemindars by the Government. These customary rates are now a subject of historical enquiry and of infinite controversy therein. But the difficulty probably arises from the simple fact that the benefit of these rates is now claimed for parties who were never privy to their assessment, whereas at the time of the permanent settlement the question had entirely a judicial aspect, and was justly left to judicial trial between parties, both of whom knew the terms of their mutual engagement. It ought to be further borne in mind that even to these old ryots the zemindars were not to grant leases for more than ten years, for fear the value of Government rights in the land should be fraudulently impaired. And as regards lands which reverted to the landlords, it is but reasonable to suppose this to have been the original understanding that "where the landlord," to borrow the language of Chief Justice Girth, "ran the risk of getting nothing for his land in bad seasons, he should be compensated to such an extent as the ryot was willing and could afford to pay."‡ In any case it would be inconsistent with the policy of the times to suppose that the landlord, having the opportunity of making such a fair bargain, was disallowed from doing so by the Government for the sake of future cultivators.

On the other hand, for the lands lying waste, and about tenants who were actually let into possession thereof by the zemindar, it is simply absurd to hold that he had not the right to name his terms, or that the tenants had, as a class, a beneficiary interest in the land independently of him, and without having ever paid any rent for the same.

In fact the much debated question of the permanent settlement of 1793 might find a more intelligible solution in the histories of Europe and America, where the doctrine of sovereignty of the people (shorn in Asia of adjuncts like the zemindars) was then practically but four years old, and whence Lord Cornwallis had come with special views as to the policy of governing distant and foreign dependencies.

The exclusive proprietary right of the zemindars to all the lands included in the permanent settlement of 1793, and to those excluded therefrom, but subsequently included under operation of Regulation II of 1819, is further brought into relief by the Regulation III of 1828, whereby the limits were defined of all the immense uninhabited tract called Sunderbuns, and immediately adjoining the permanently-settled lands, in which even the cultivators are now supposed to have had an interest, and, as compared to the zemindars, a "preponderating"§ share of the whole. In that Regulation the Government lays down how certain lands were to be attached by Government as "in the case of a lapsed farm," and how "certain tenures, however designated, were not to be considered hereditary and perpetual, if the grants under which they were held *did not convey in express terms* an hereditary or perpetual interest." And in regard to the Sunderbuns, it was provided that all parties having leases from Government for any lands included therein "shall be entitled to hold or to take possession" of them "without question or opposition;" and that, if "any zemindar, talookdar or other sudder *malgoozar*, or any other person (evidently not excepting the class for whose benefit section 6 of the Bill has been drafted), owning and occupying or collecting the rent or revenue of cultivated land in the neighbourhood," shall "sue to contest the title" of the former, "the suit shall be dismissed with costs. Provided, however, that if any zemindar, talookdar, or

\* Reg. VIII, 1793, sec. 44. See also memorandum on the Revenue Administration of the Lower Provinces of Bengal submitted to Government by the Board of Revenue, 16th June 1873, pp. 98-99.

† Board's Memorandum, p. 99.

‡ See the edition published at the *Hindoo Patriot Press*, p. 25.

§ Ilbert's speech: Abstract of Proceedings, p. 112.

other person aforesaid shall claim to possess a valuable interest in part of the Sunderbuns, by virtue of authority to collect money or other valuable thing *from the persons engaged in gathering wax, or cutting wood, or obtaining other jungle products of the tract, or by virtue of any other similar privilege or advantage which may have been recognized as part of the assets on which the assessed revenue of his zemindary, talookdary or other tenure was adjusted at the time of farming the perpetual settlement of the district, and the collection of which was not subsequently stopped and due compensation made under the rules relative to the collection of sayer revenue or other similar arrangement, such zemindar, talookdar, or proprietor [no mention is here made of ryots or even of the persons abovementioned engaged in gathering forest produce]* shall be entitled to receive from Government compensation for any diminution in the value of such interest and advantage consequent on the arrangement adopted for the cultivation of the Sunderbuns."—*Regulation III, 1828, sections 12 and 13, clause 1.*

Two questions arise from the foregoing; (1) If the ryots in the neighbourhood, actually engaged in gathering on these lands wax, &c., for themselves or for their zemindars, were not entitled to compensation, how can they be supposed to have had a right in these unoccupied lands or in similar lands included in the permanent settlement of 1793? (2) If the ryots living in the neighbourhood had no such right, how can ryots procured from a distance, not unoften hillmen from the southern parts of Behar, by the lessees of these lands, be held to have had a right in these unoccupied lands which have been reclaimed at the expense of the lessees referred to, and under the declaration quoted above?

It has been argued that the Bengal Tenancy Bill would not take away from the landlords more than what, under customary law was, from before the year 1793, due to the cultivating classes, and that it had never been intended to make of Bengal zemindars anything like English landlords; and hence clear words have been required of the zemindars to show their absolute right in respect of the waste lands. Now it happened, even so late as 1861, that for all the care evinced by Government in 1859 for customary rights, supposed to have been held by cultivators against the zemindars, it did not care to vest the property of the soil with any but the non-cultivating zemindar class. It had in 1861 large tracts of waste land at its disposal, and an attempt was made, and partially carried out, to introduce certain property-rules into all such and divers other classes of lands. Whether the precise object was to import the English system of property cannot of course be definitely proved. But the tenure introduced by the measure alluded to has been currently expressed by the term "Fee-simple;" and English proprietors were expected to, as in fact they did, avail of the rules framed.

The following extracts are given from a Resolution recorded by the Government of India during the time of Lord Canning. It bears date the 17th October 1861:—

"He (His Excellency the Governor-General in Council) confidently expects that harmony of interests between *permanent European settlers* and the half-civilised tribes, by whom most of these waste districts, or the country adjoining them, are thinly peopled, will conduce to, &c."

The Resolution then proceeds to state the rules under which effect was to be given to the two proposed measures for sale of waste lands belonging to the State and the redemption of land revenue by the landlords:—

"8. I.—As to the sale of unassessed waste lands, in which no right of proprietorship or of exclusive occupancy are known to exist at present, or to have existed in former times, and to be capable of revival.

"9. In any case of application for such lands, they shall be granted in perpetuity under the rules which will be presently laid down, as a heritable and transferable property, subject to no enhancement of land revenue assessment.

"10. All prospective land revenues will be redeemable at the grantee's option by a payment in full when the grant is made, and the land granted will thenceforward be permanently free of all demand on account of land revenue."

It then goes on to consider "prior claims of property or occupancy in the land applied for," prescribes for the raising of such claims "a term which, probably, need rarely exceed thirty days" from advertisement, and directing how, after their disposal, the applicant was at once to have the land allotted to him, proceeds as follows:—

"19. If after the allotment of the land under the preceding rule any persons shall establish a right of property in the lands allotted, the possession of the party to whom the land has been granted *bond fide* shall not be disturbed. But provided the claim be made within one year from the allotment, the claimant on proof of his right, and on shewing good reason why his claim was not advanced before the allotment took place, shall be entitled to receive from Government full compensation for the actual value of his interest in such land. After the expiration of a year all rights of third persons, which have not been already claimed, will be altogether barred. [The Bengal Tenancy Bill applies equally to estates protected by these rules and to all other lands, *e.g.*, the Sunderbuns: the landlord's right of re-entry in respect of lands held by settled and occupancy ryots and the question of compensation for disturbance are governed by the same rules in these as in other kinds of property in Bengal.]

"33. Holders of grants under any existing rules (*i.e.*, governing, for instance, leases of Sunderbun lands under Regulation III of 1828), who have not yet completed the purchase of their grants, will be allowed to commute them under the new rules..... and he (the grantee) will be free to purchase absolutely as much or as little of that area as may suit him.....

\* \* \* \* \*

"37. The tenures of all waste lands granted under this Resolution will be that of an heritable and transferable property held in perpetuity free from all claims either of the Government or of third persons prior to, or inconsistent with, the grant.



\* 11.—As to the redemption of the land revenue: [*i.e.*, applying even to permanently-settled lands (see paragraph 42.)]

\* \* \* \* \*

"43. The tenure obtained will, as in the case of waste lands, be that of an heritable and transferable property.....But such tenure will not carry with it, as that of waste lands will, immunity from any legal claims other than those of Government to which the lands may be subject, and *which may date prior to the grant under this Resolution* (Qy. Does not the restriction as to *prior* legal claims exclude all subsequent legal claims of third persons including tenant-right, dating from October 1861? And does not this afford some commentary on section 7 of Act X of 1859, whereby permission was given to provide against the growth of occupancy rights coming under the purview of section 6?)"

It would be hard to say what other "strong and clear words" could be required to substantiate the contentions of the landlords.

But what a falling off there has been from the land-policy of Lord Canning's Government will be perceived from the following remarks of the Government of India, contained in its Despatch to the Secretary of State for India, on the Bengal Tenancy Bill, dated the 21st March 1852:—

"Many events had tended to lower the claims of tenants in official estimation and to help the cause of the large landlords. Before the mutiny, ideas on the subject of property and tenant-right in India took very much of their colour from the views of the able peasant-proprietary school of the North-Western Provinces. But the occurrences of 1857 drew attention to the leaderless condition of the people; the sympathies between the mass of the agricultural population and their rulers were for some years disturbed by reminiscences of disorder, and severity; the development of the country gave rise to hopes of European colonization, and *thus* theories of land tenure, which were unfavourable to tenant-right, as being an impediment to the free disposal of property, were advocated in Lower Bengal on behalf of great European interests, and elsewhere, as coincident with political expediency (!) The relation between landlord and tenant *began* (?) to be regarded purely as one of contract. Sir Barnes Peacock objected to section 6 of Act X, because, in his opinion, it interfered with the just rights of the zemindars, at least in the permanently settled districts, by vesting rights of occupancy in the ryots which, as he thought, had no previous existence.\*"

The spirit which has dictated the above is manifest enough. It is nothing less than a desire to wean the agricultural population from their natural leaders and protectors—the landlords. The very basis on which the relations between the landlord and tenant had hitherto subsisted is denied. The principle of contract is held in supreme contempt. It is even broadly asserted that this principle, which dates from the days of the farming out the public revenues before the permanent settlement, *began* to be recognised only after the convulsions of the Mutiny. And the emphatic opinion of Sir Barnes Peacock, the highest judicial authority in the land, is mentioned as if it was an outcome of that political commotion and not the result of mature juridical deliberation and reasoning.

The judgment of Lord Lyndhurst, cited by one of the Members of the Council to show that the zamindars "had an absolute dominion and ownership of the soil," has, by an argument endorsed by the Law Member, been explained away by a third, the argument being that the immediate question before the Privy Council in that case was not one "as to the relative position of zamindar and ryot." This argument would certainly be very important in a *Court of Justice*, in order to leave the Judge free to fully try the same question after hearing arguments and weighing evidence on both sides. The dictum of one Judge does not bind another's ruling, because counsel is not heard in regard to the former, and *is* heard in arriving at the latter. But how the circumstance alluded to justified the *legislature* in arriving at a conclusion different from that of Lord Lyndhurst remains a mystery. But perhaps the case of Raja Lelanund Sing *vs.* the Bengal Government, might be more acceptable. In that case the Right Hon. T. Pemberton Leigh, after a long inquiry into the circumstances of the permanent settlement, finds the object to have been "to leave to land proprietors the benefit of all subsequent improvements †" And, at all events, if all dicta of Sir Barnes Peacock on the land question have not become vitiated, because one of his rulings has been overruled by the majority of his colleagues in the High Court, the following passage may have a value in the eye of the legislature:—

"I will add," he says, "one word as to the argument of Mr. Montriou that the ryots were originally the owners of the soil, and that neither the Government nor the zamindars were the proprietors. This argument cannot apply to ryots who are in possession of land which has been occupied and brought into cultivation for the first time since the permanent settlement. It is clear that a ryot cannot at the present day, by merely entering upon land belonging to a zamindar, and bringing it into cultivation, become the proprietor of the soil. The zamindar may lose his right by the operation of the statute of limitations, and the right to the soil may then be acquired by the ryot. But in cases in which there is no contract, and to which the statute of limitations does not apply, the ryot cannot by occupying and cultivating become the proprietor of the soil. Neither can he, by occupying with the consent of the zamindar, and paying rent for the land to him, become entitled to the proprietorship of the soil, even though he should acquire a right of occupancy by virtue of Act X of 1859.‡"

Moreover, if the cultivating classes had, with the zamindars, a part interest in the soil, it does not appear that the Government has hitherto given it any recognition in dealing

\* Correspondence, p. 3, para. 7.

† 6th Moore—pp. 108-10, quoted at 2nd hand.

‡ Ishur Ghose *versus* Hills, on a petition of review of judgment.



with land over which the State has had exclusive control. Mr. Monro, in reporting on the Rent Bill prepared by the Rent Commission, quotes certain rules to shew what has been with the Government, as landlord, "the practice with reference to the eviction of mere ryots."

"In dealing with mere ryots," so runs the rule, "it is desirable not to interfere with their possession till it becomes necessary to displace them."

"Should an arrear remain due at the close of the year, if the defaulter be a mere ryot having no transferable interest in the soil, he may be summarily ousted and his lands given to another."\*

So also the Revenue Board in its memorandum dated 1873—

"Lastly, it is to be observed that it is the *present policy* of Government to take no means, either in Government or in wards or attached estates, to prevent tenants-at-will from acquiring rights of occupancy; though, on the other hand, it will not, in recording the rights of tenants and delivering pottahs to them, *assume the existence of such rights unless they are claimed.*"

And "where the practice of the former proprietor" was "to guard, by special precautions, against the accrual of rights of occupancy, *the continuance of that practice is sanctioned.*"†

The customary right of the cultivators in the property in the soil, unaffected by the permanent settlement, is said to be a fraction of the whole. But it is nowhere stated what the zamindar's interest was independently of that settlement, and as distinguished from the supposed class of cultivators who, it would follow from the opposite point of view, were not free, like the landlord class, to buy permanently-settled lands. It cannot be said that the zamindar had no interest whatever in the land, apart from the malikana allowance; for in that case this allowance in respect of lands taken away from his possession would remain unaccounted for. On the other hand, if he had any such part-interest derived from customary law, it does not appear that the legislature has given it the least recognition in the Bill under consideration. Certain it is that jungle lands (*jalpai*) at one time yielding fuel for the manufacture of salt, have been surrendered by Government, and only to zamindars, on the closure of salt works in many parts; and in some cases refusal to surrender has been overruled by the civil courts of the country.

Again, the Government as landlord, has had often enough to let out land to cultivators: but why does not the Government allow the zamindars their customary share in such lands? Nor does it appear that the Government has ever had occasion to decide which of any number of applicants, zamindar or cultivator, had the right to the lease of tenures at its disposal. In any case, when land is taken by Government at a valuation, for public purposes, "the fact," noticed by the Board of Revenue would be inconsistent with the policy of the Bill, "that, as a rule, the occupancy ryots have advanced no claims to compensation, except for damage done to personal property."‡ Thus the whole theory is absurd; and whether the absolute ownership of land lay with the conquering power or the zamindars, it is certain that the cultivators of the soil had no share in its property, as of right. The first point in Indian land tenures is that whoever holds land must pay for it something every year. The cultivator's rents never covered the waste or unoccupied lands of the village. The zamindar's revenue has always covered these. Hence the zamindar's right is unassailable, except by a ruthless act of spoliation. The permanent settlement did not leave the question of property an open one between the zamindar and the cultivator of the soil. Power was certainly reserved to Government to make laws; but that was only as common sovereign over landholders and cultivators: and calculated not to diminish, but in the language of the Court of Directors, to "enhance the value" of the proprietors' rights: to prevent the ryots "being *improperly* disturbed in their possession" (*i. e.* in the matter of eviction), and "to define the limits by which rent could be determined" so as to prevent *unwarrantable* exactions and arbitrary conduct of the zamindar. Instructions like these cannot have justified the policy of the present Bill.

This would, perhaps, be the proper place to consider how far, if at all, Act X of 1859 interfered with the proprietary rights of the landholders, and gave a sanction for further encroachments of the kind proposed. It will be necessary for this purpose to read together the sections 2—7, 21, and 78 of that Act which have been re-enacted respectively as 2—7, 22, and 52 of Act VIII (B.C.) of 1869, together with sections 9 and 46 of the latter Act.

*Section 2 of Act X of 1859, and VIII (B.C.) of 1869.*—"Every ryot is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a pottah containing the following particulars:—

The quantity of land; and where fields have been numbered in a Government survey, the number of each field.

The amount of annual rent.

The instalments in which the same is to be paid.

And any special conditions of the lease.

If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.

*Section 3.*—Ryots who, in the provinces of Bengal, Behar, Orissa and Benares, hold lands

\* Bengal Govt. Report, Vol. II, p. 219.

† See Board's Memo., p. 159.

‡ Memorandum of Revenue Administration, p. 104.

at fixed rates of rent which have not been changed from the time of the permanent settlement, are entitled to receive pottahs at those rates.

*Section 4*.—Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a ryot in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

*Section 5*.—Ryots having rights of occupancy, but not holding at fixed rates, as described in the two preceding sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

*Section 6*.—Every ryot who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khainar, nijjote, or sir land belonging to the proprietor of the estate or tenure, and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) to lands sublet for a term, or year by year, by a ryot having a right of occupancy. The holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this section.

*Section 7*.—Nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot, when it contains any express stipulation contrary thereto.

*Section 21. (Section 22 of Act VIII (B.C.) of 1869)*.—When an arrear of rent remains due from any ryot at the end of the Bengal year, or at the end of the month of *Jeth* of the *Fusly* or *Willayuttee* year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due. Provided that no ryot having a right of occupancy, or holding under a pottah, the term of which has not expired, shall be ejected otherwise than in the execution of a decree or order under the provisions of this Act.

*Section 78. (Section 52 of Act VIII (B.C.) of 1869)*.—Any person desiring to eject a ryot, or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejection or cancelment, and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejection or cancelment. In all cases of suits for the ejection of a ryot, or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into court within fifteen days from the date of the decree, execution shall be stayed.

*Section 9 of Act VIII of 1869*.—If on the trial of a suit for the delivery of a pottah instituted by a ryot having a right of occupancy, the parties do not agree as to the term for which the pottah is to be granted, the court shall fix such term as, under the circumstances of the case, may seem just and proper: provided that the term shall not in any case be longer than ten years; and in estates not permanently settled, shall not extend beyond the period for which the proprietor of the estate has engaged with Government: provided also that, if the defendant be a farmer or other person, having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest. For cultivators not having a right of occupancy, the term of pottah shall be exclusively in the discretion of the person entitled to the rent of the land.

*Section 46*.—If any under-tenant or ryot shall, at the *Mâl Cutcherry* for the receipt of rents, or other place where the rents of the land or other immoveable property held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the zemindar or other person in receipt of the rent of such land; and if the amount so tendered shall not be accepted, and a receipt in full shall not be forthwith granted, it shall be lawful for the under-tenant or ryot, without any suit having been instituted against him, to deposit such amount in the court having jurisdiction to entertain a suit for such rent, to the credit of the zemindar or other person aforesaid: and such deposit shall, so far as the under-tenant or ryot, and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of, a payment then made by the under-tenant or ryot of the amount deposited to such zemindar or other person.

*Section 2* ought to be read with reference to the old rules of 1793, where by the exchange of leases was strongly insisted upon, and ten years was made the maximum limit; though by Regulation V of 1812 the restriction was afterwards withdrawn. In section 3 it will be seen that, as between the zemindars and the cultivators holding at fixed rates from the time of the permanent settlement, the Government assumed that, where the zemindars had hitherto omitted to exchange any leases, all subsequent leases obtained through the courts of justice should be at such rates. It certainly does not warrant the inference that all cultivators of that date were entitled to fixed rates, but only those who had been holding at fixed rates. Certainly the omission to vary the rates did not justify such a penalty. Thus Act X did make encroachments on the rights of the zemindar. But the encroachment was made ostensibly at least in the shape of a penalty for the violation of a well-known rule—the one about exchange of leases. The Government claimed that the discharge of its judicial functions should be helped by adequate evidence being furnished by litigants.

Section 4 was another rule of the same kind. It was a very hard rule as against the landholders, but after all the rule was one of presumption, and directed against the same fault of omission to exchange leases.

Section 6 is supposed to have been the worst violation of the rights secured by the permanent settlement. But in fact this section was only one about exceptions to those—the majority of—cases which came under section 7. And if any doubt could be thrown on this explanation, all would vanish on reference to section 9 of Act VIII of 1869, whereby the old limit of ten years was maintained for leases under section 6. And ‘for cultivators not having a right of occupancy, the term of the lease’ was to be “exclusively in the discretion of” the landlord. If therefore the landlords have anywhere betaken themselves to “shifting ryots” from land to land, the fact must be attributed to the unjustifiable endeavour made in certain quarters, exposing the landlords to the loss of a valuable right, rather than to any want of loyalty on their part to the just laws of the country. Injustice is the most fruitful source of violations of justice; and even the legislature must fail to transcend this universal truth.

Section 6 simply provided that where the terms of lease were not to furnish any guide, duration of possession was to be taken to determine what lands the tenant was not to be disturbed from possession of, at the will of the landlord: it was again a question of evidence. The absence of a certain important entry in a document was to be interpreted in a certain way. It did not interfere with the general principle, which was fully recognised in section 21 that non-payment of rent renders all tenants (those with unexpired leases, and the occupancy ryots being both put in the same category) liable to peremptory eviction. The Act X, however, only required the question of eviction in such cases to be brought before courts of justice; and in section 78 (sec. 52 of Act VIII) the most stringent provision was made against the ryot,—a provision, by the way, which is for realization of arrears of rent by far the safest and least objectionable to all the parties concerned. And in section 46 of Act VIII of 1869, which was a re-enactment of a short law passed in 1862, the Government did all that lay in its power for the protection of honest cultivators. It threw open its treasury as an ordinary banker for the adjustment of accounts whenever required by the cultivator.

Thus in the matter of occupancy right, all that the legislature did in 1859 was to close the loopholes, of which any undue advantage might be taken by the zemindar. First there was the lease to set forth the terms between parties; then there was the interpretation to be put on omissions in respect of such terms; thirdly, this interpretation was not to be enforced for a period of 12 years from when a tenant was let into possession. No indulgence was shown to cases of non-payment of rent; but for the sake of the ryot, the rent was allowed to be deposited in the Government treasury, instead of its having to be carried to a perverse landlord. It is believed by some that the occupancy clause was an application of the doctrine of prescription, but the argument of Sir Barnes Peacock in this connection has nowhere been met. “The civil law,” he says, referring to Domat 2227, “held that a farmer or tenant could not acquire by prescription what he held by that title, for in order to prescribe it is necessary to possess, and *to possess as master*.” It is not meant that the anti-zemindar policy had not begun in 1859. But it had not then made such advance as it has done since the recent difficulties in Ireland.

The question of eviction having been determined by the framers of Act X of 1859 in the way mentioned above, another difficulty arose as to the question of rents. Where the landlord had chosen not to insist upon his right of re-entry; where the current rents were regularly paid, and neither party was in consequence to be disturbed in his possession, the rate of rent payable would obviously have to be determined between them at times at least, and by a third party of course. Accordingly the task was made over to the judicial authorities; and the legislature thought—wrongly as it has since appeared—that sufficient indication would be given to Judges by the simple expression “fair and equitable rates.”

But the error of the legislature, if any, has been exceeded by the assumption, probably traceable to politico-economic views, that the difference between a rack-rent and a fair rent is equivalent to a proprietary right in the land. A rack-rent denotes the limit of what the land is capable of yielding. Anything paid in addition converts the payment into a cottier rent, and as such becomes a charge levied on the privilege of keeping one’s self to a particular calling, *viz.*, that of cultivators. Such a tax is open to grave objections certainly, though the outcry comes with very little grace from a Government which levies several taxes, like the Road and Public Works cesses, from the poorest of the cultivators. But as compared to a rack-rent, a fair rent must always be a very indefinite amount; for in estimating the fairness, account would have to be taken of the demand for land, even where the wages of labor were regulated only by custom. It is also mathematically true that an annual charge, whether of rent or other kind, can be equated to what is called its capitalised value, but that would not justify its being looked upon as property, for one of the data required, as a constant quantity, is the rate of profit common to both terms of the equation; and in the present case this constant quantity has always been uncertain. And where this variable element, the rate of interest, was not intended to be meddled with, and where too the question of property was left in act, no greater mistake could be committed than to presume that a difference was intended between rack-rent and fair rent, and to assume that the necessity to determine a fair rent, which was imposed on judicial authorities, was tantamount to giving the tenant a property in land equivalent to what would be the capitalised value of the difference under an unknown market value of money.



The truth seems to be that Act X intended by section 7 to make written contracts the rule in regard to the question of eviction, and to provide for the extinction of the landlord's right of re-entry where, save for non-payment of rent, the omission to enter into such contracts would show that no such reservation of right was intended at the time the tenant was let into possession. The retrospective effect given to the provision seems to have caused all the evil complained of by landlords. But they do not now wish to call in question the finding of judicial authorities.

However that might be, the restriction alluded to being imposed upon eviction, the determination of fair rents became unavoidable in consequence. This question was taken up by Government with obvious reluctance; and at the first instance it was left to the Judicial Department to do, as the Settlement Officers were doing in other provinces, but without the bias, unavoidable in those officers, of the peculiar interests of Government. But it was found afterwards that more detailed rules were necessary than the guidance furnished by the expression "fair and equitable rates of rent." And it is contended by landlords that this necessity for making such rules could never have justified the proposed division of the zemindar's proprietary right.

To sum up: The proprietary right of the zemindar is evidenced—(1) By the simple consideration that there could be no rival claimant on lands not occupied by the cultivators of the time of the permanent settlement. (2) The fact that the zemindar had an allowance even when he refused to accept the permanent settlement, and was in consequence put out of possession. (3) The fact that a similar right was recognized over lands claimed to be included, but proved to be excluded, from the permanent settlement. (4) The fact that in the Sunderbuns compensation was provided for to the zemindar and to the exclusion of persons belonging to the cultivator class who collected the forest produce for the zemindar. (5) The fact that some of these lands actually occupied by people were treated in certain cases "as lapsed farm." (6) The fact that waste *jafrai* lands have been surrendered by Government to the zemindars in whose estates they were situated. (7) The fact that the Government ignored all right of cultivators in the neighbourhood, as against the parties let by Government into possession of lands in the Sunderbuns. (8) The fact that it ignored all such rights when, within living memory, the English system of property and the rights of fee-simple were introduced in this country. (9) The fact that the Government in dealing directly with the land and the cultivators never treated the latter as having the whole or part of the property in the soil, nor (till of late) gave any compensation to the occupancy ryots when acquiring land for public purposes. (10) The fact that Act X strictly adhered to the general principle of tenant-right in this country, that non-payment of rent determines all occupancy rights, and that consequently the tenant could never be a co-proprietor with the zemindar, least of all in lands which have ever remained unoccupied by tenants, while the zemindar paid the revenue for them. (11) The consideration that, apart from their customary rights, a two-fold compensation was due to the zemindars who accepted the permanent settlement—one, for the labour of collecting the Government dues, and the other, for the risks of the collection, and that this compensation was obviously afforded by (a) the profits of lands which were yet to be reclaimed, but which were nevertheless included in the permanent settlement and covered by the revenues assessed; and (b) by profits realisable on extinction of the tenant-right then existing. And lastly, (12) that judicial findings or dicta have been recorded, suggesting at least that the point in issue should not be decided by the legislature and without the usual judicial tests provided for the purpose.

#### 4.—Tenant-right.

But even if property in land belongs to the zemindar, and the zemindar alone, the question as to the distribution of the proceeds of land would have to be decided, and upon its own merits. The economic doctrine of distribution on the triple basis of land, labour and capital is hotly contested in Europe; and perhaps the present agitation among the members of the Anglo-Indian Government is due only to get that science out of the way. But the attempt to break up landed rights, so as to lay by something in the name of the cultivator, will probably be found to be neither fair nor reasonable. In any case, the position could not be maintained, on grounds of political economy, that a man who was free to keep any land in his own hands, and to cultivate it by his servants or by hired labourers, should not be permitted to let it to another so as to reduce the tenant's margin of profit though with his own consent and for valid reasons. A doctrine like this may, however, be traced to a growing class of men in Europe, whose general views of social relations the Government would least desire to see extended in India. Besides, the doctrines about peasant proprietors are absolutely inapplicable in a country where the land can never be held without paying for it something in the shape of rent, either to the State, or to the landlord, or to both.

But if regard was to be shown to the customs of India (the scientific character of which is still unsettled), the communistic prejudice against landlordism ought to have been guarded against with more care.

The three kinds of right, shortly denoted by the term three F's, however desirable in Ireland or in Great Britain, are not logically inseparable, nor are they universally acceptable. Fixity of tenure no doubt calls for fair rents: but the question of free sale is a politico-economic idea which, it will be found, is not suited to this country in its existing condition, and there is no reason why fixity of tenure should be given to those who are not entitled to have it. Pauperism would be provided against, within the limits of human power, by fair rents. Fixity

of tenure in fact was what was given to the country by the permanent settlement itself: for everybody has been declared free to buy the property created by that measure, and people, too, have freely availed themselves of the opportunities thus afforded. It may not agree with some people's views of the fitness of things, that those who have purchased permanently-settled lands do not confine themselves to the function of cultivating the soil. But even the cultivating classes of the country have had other feelings, and when they have had money to invest, they have depended largely upon the promises given by Government in 1793. In point of fact, all descriptions of caste may be found among the zemindars of Bengal, and if that would not satisfy the desire displayed for the nation's prosperity, the philanthropy might be seriously impeached which aimed at turning all landholders into cultivators.

Section 7 of Act X, it is said, has been perverted to noxious purposes by what has been called "shifting" of ryots. But was that section (especially when viewed with reference to section 9 of Act VIII of 1869) inserted in order that it should be made a dead letter of? The intentions of the framers of Act X have been largely appealed to, but the object of such appeals—to explain that section away—is obviously of greater significance.

On the other hand, it cannot be denied that just as in land the unit for assessment of rent must be that which does not leave any profit, so in social life the unit of prosperity must be found among those who are barely removed from starvation. This may be a misfortune, but it is the common fate of mankind; and the zemindars of Bengal are certainly not responsible for the inevitable consequences of man's struggle for existence. However, the framers of Act X of 1859 attempted to minimise this evil by confining it to those cultivators who could manage to hold to their land continuously for 12 years. For the rest, it may be hard that the zemindars should endeavour to save their own from being eaten into; but it is not a little creditable to them that the number of the tenants-at-will is so small, and that their rents are so often below a rack-rent. The Secretary to the Government of Bengal, while sending the Bill which was the immediate precursor of the one under consideration, bears testimony to this fact in the following terms:—

"The inquiries made in connection with Sir R. Temple's proposal to fix occupancy rates with reference to competition rates, brought to light the fact that competition has as yet got next to no hold upon the rents of Bengal. In one or two districts near the Presidency there is perhaps some little competition for land, but even this is local rather than general, and confined as a rule to the village to which the land under settlement belongs. \* \* \* Generally speaking, there is nothing like competition for land in the economic sense even in places where the population is most dense. In the majority of districts the effective demand is still for ryots rather than for land, and even where the land is nearly all taken up for cultivation, custom is still the principle that decides the rent. The rates are customary and not competitive rates, *however high they may in any particular case be found to be.*"\* (The italics are as in the original.)

The foregoing passage is interspersed with observations tracing a parallel in the far-off cottier questions of Ireland. But the facts of every-day experience with the people of Bengal,—facts, for instance, about the caste question and the consequent overcrowding of particular branches of industry and in particular localities, and facts about the inducement afforded by the personal character of individual zemindars, and even by that of their land-stewards, to the poorest and the floating portion of cultivators—these facts have for obvious reasons, escaped the attention of European gentlemen reporting upon the subject.

The stern economic fact remains unassailed after all, that the poorest classes must be converted into day-labourers, and that the section 7 of Act X of 1859 only indicates where this residuum is to be found. To extinguish it would be simply impossible; and so long as this class of non-occupancy ryots is not reduced to competition rates, all anxiety of the kind evinced by the legislature is simply out of place.

Even if shifting of ryots does prevail to any large extent—and no statistics are forthcoming to prove this, while the experience of the zemindars, belies it,—it would only show an increase in the number of tenants-at-will; an increase which would be perfectly innocuous so long as competition rates did not prevail. The trick of shifting ryots certainly discloses another fact, which, though it may rouse the ire of Government, ought even therefore to be the less meddled with. It shows a desire to avoid the interference of judicial or executive authorities in the fixing of rent-rates. But if the rent-rate fixed by the zemindars in such cases be not objectionable, the desire in question is not positively culpable; and the only way to get such desire under the civilizing influences of the British Government is to improve the *quality*, rather than the *strength*, of the law and the justice of that Government.

It would certainly become a difficulty if the number of tenants-at-will become very large, and if afterwards their rent-rates rise up to, or tend to exceed, competition or economic rates. But the natural solution to this difficulty—conversion of tenant-cultivators into hired labourers—is very obvious; and it is an assumption of no ordinary kind to suppose that the peasantry of Bengal will not take to this solution, but follow the example—unknown to them—of *Irish cottiers*.

A certain section of tenants verging upon the condition of day-labourers being unavoidable, there is no reason why the principle of section 7 of Act X of 1859, confining the class to less than 12 years' occupation of specific plots of land, should be rejected. On the contrary, its due recognition would largely facilitate legislation about fair rents for occupancy tenants.

What, then, is the principle of fair rent? The answer to this question would be easy enough from the stand-point of the permanent settlement, if the authorities would have the patience to view it from that point. The State share of the produce at the time of the permanent settlement is roughly given at  $\frac{1}{3}$ ths or 60 per cent. of the produce. Then the metayer systems prevailing at places also afford important indications. And in the "Directions for settlement officers in the North-Western Provinces," 66 per cent. of the nett assets used at one time to be taken by the State from cultivating proprietors (as well as non-cultivating zemindars drawing rents from tenants). If, with these facts, the instructions of the Court of Directors in 1793, not to deteriorate the value of zemindari tenure had been duly coupled, little or no opposition would have been apprehended from the landlords. But since these limits have been exceeded, and since this difficult question has not been approached in a judicial spirit, the petitioners to Parliament pray that they would withdraw their former prayer for legislation rather than have a law for enhancement of rents, which would take away a large slice from their existing property in land.

#### 5.—Necessity of the Legislation.

The facts set forth above, to show the revolutionary character of the proposed law and the absence of competition rents in Bengal, will show how little a measure like the Tenancy Bill has become necessary in Bengal. But it has been argued that the landlords prayed for legislation, and cannot now recall that prayer. But whether they must have King Stork because they wanted something better than King Log, now rests with Parliament, and Parliament alone. The facts will show, however, how little the landlords, when their consent was obtained (and in a characteristic way too) to a general revision of the law, could foresee the leaning, since disclosed against them, in the minds of the ruling authorities.

It is now pretty well known that the punctual payment of revenue required by the permanent settlement, coupled to the checks interposed against the semi-regal or feudal powers exercised by the zemindars, led to the introduction from Europe\* of the rules for the distraint of the crop, &c. But these foreign ways of dealing in business, as the Parliamentary Report of 1813 records, "were ill-understood, and not found easy of practice;" "the tenantry were enabled to withhold payment of rents," "the zemindars suffered oppression from the mal-practices of the cultivators," "the courts of justice were found 'incompetent' to afford them redress," "hazard of a reduction in the rates of the assessments as well as the property of the zemindars" was strongly apprehended, and a remedy was applied by Regulation XXXV of 1795. But "the experience of four following years did not justify the expectations formed" in regard to that Regulation†; and it appears that the total collections in the Government Treasury, from 1794 to 1798, fell short of the annual revenue demand by no less than three lakhs every year.†

Again, of "some of the oldest and most respectable families," we are told that, "the dismemberment of their estates at the end of each succeeding year threatened them with poverty and ruin;"§ and "within the ten years that immediately followed the permanent settlement, a complete revolution took place in the constitution and ownership of the estates which formed the subject of that settlement."|| The passing of Regulation VII of 1799 had been deemed necessary in order to further "strengthen the hands of the zeminders over their under-tenantry, who, it appears, had, under the general protection afforded by the courts of justice, entered into combinations which enabled them to embarrass the landholders in a very injurious manner by withholding their just dues and compelling them to have recourse to tedious and expensive process to enforce claims which ought not to have admitted of dispute."¶ These facts are well known. There was a corner, however, whence they were explained to the Court of Directors as "a change of circumstance which ought to be received with satisfaction!"

It was said to evince that "the great body of the people employed in the cultivation of the land experienced ample protection from the laws, and were no longer subject to arbitrary exactions"\*\*\* that "the equal administration of justice" was "real and efficient," and in the words of an Indian document bodily transferred to the Parliamentary report, that "it had been foreseen that those immense estates were likely in the course of time to fall into other hands by becoming gradually sub-divided,—an event, however, much to be regretted, as affecting the individual proprietor, would probably be beneficial to the country at large, from the estate falling into the possession of more able and economical managers."

Such explanations seem to have raised "a doubt in regard to the sincerity of the intentions expressed by the ruling authority for the prosperity of the principal zemindars." But it was allayed by the fact that at the very time they were written, remedies were being assiduously devised for the evils alluded to. And then "the great body of people" quietly submitted to Regulation VII of 1799, for which, however, sixty years afterwards a change was perceived to have been requisite from the aspect of affairs.†† "A great financial improvement," records the Board of Revenue in 1873, "was effected by the legislation of 1799. The zemindars began to collect their rents with ease and success."

\* Some maintain that the principle was not new to India, but may even have been borrowed in Europe from the East.

† Fifth Report, pp. 55-56.

‡ Memorandum on Revenue Administration, p. 9.

§ Fifth Report, p. 56.

|| Memorandum, &c., p. 9.

¶ 5th Report, p. 57.

\*\*\* 5th Report, p. 55.

†† 5th Report, pp. 57-58.



The Government dues were paid up with greater regularity." In 1824-25 the revenue demand showed a tendency to rise, and then "rapidly expanded" under the operation of Regulation II of 1819. But in 1859 "the remedies assiduously devised" for the protection of the little body of zemindars, and against the great body of the people, were completely wiped out of the Statute Book. Difficulties, however, again arose, despite the liberal views which in 1859 had perceived a state of things different from that in 1795 and 1799. These difficulties were brought to a head by a well-known ruling of the High Court, dated 1865, and in 1872 the great body of the people had made a corresponding advance over the old tactics of "withholding their dues," and broke out in open riot against the little body of zemindars, publicly claiming to be the especially-favoured subjects of Her Gracious Majesty the Queen. And it would seem that they were not far wrong since the then Lieutenant-Governor of Bengal recorded the following opinion in the public Proclamation dated the 4th of July. "It is perfectly lawful to unite in a peaceable manner to resist any excessive demand of the zemindars, but it is not lawful to unite to use violence and intimidation."\*

The spirit in which the above proclamation was issued needs no comment. It proceeded from a Lieutenant-Governor whose energetic inquiries disclosed the prevalence of certain illegal cesses in different parts of Bengal, but who nevertheless presented the facts as if every zeminder had been levying all the cesses compiled in the list. And it is no less singular that in spite of the opinion expressed by him, and generally admitted by others that the cesses are nothing but a convenient, though illegal, mode of enhancing the rents of land by adding a rate on the rental, instead of one on the acreage; and in spite of the fact that this same principle has been embodied in section 59, clause 2, of the Bill under consideration, it is singular after this that these cesses have been set up as the clearest proofs to justify an interference with the permanent settlement.

The Lieutenant-Governor, Sir George Campbell, has himself recorded as follows on the subject of these cesses:—

In Bengal the levy of cesses may or may not be carried to such an excess as in comparatively primitive Orissa, but that the system does prevail there is no doubt. In Bengal Proper, however, the Lieutenant-Governor also feels this, that the cesses, illegal though they be, do in practice to some extent take the place of the enhancement of rents to which by litigation the zemindar might perhaps establish a right, and there is little doubt that the people much prefer such cesses to any alteration of their old-established rents. Where, then, there has not been any recent general enhancement, and the cess system is not carried to very great excess, the Lieutenant-Governor is inclined to think that, while the people do not complain, it may be better not to embark on a crusade to put down such customary illegalities, and that we may perhaps trust to the gradual enlightenment of the lower orders to enable them so far to look after their own interests.†

It is hoped that the rise in rents has not been so great as to absorb the whole of the ryot's share in the general improvement. It may even not improbably be that if the proprietors, instead of levying irregular cesses, were systematically to pursue in the courts a course of enhancement to the utmost limits that the law allows, they might still establish grounds for further enhancement in many cases, while the expenses of such a mode of proceeding would fall very heavily on the ryots, whatever the event of such suits.‡

It may be said that the rights of enhancement conferred on landlords by Act X of 1859 have not been the occasion of much serious excitement or great social disturbance in these provinces generally in the past year. Of late years the courts have shown a tendency to scrutinize thoroughly the grounds of enhancement, and to watch the cases affecting great classes of ryots, who are individually unable to contest particular cases with zemindars on equal terms in respect of money and legal aid; and the zemindars of Bengal have not generally been very pushing in this respect. It was principally in connection with the indigo question that the planters of Bengal Proper fought and lost the battle of an unlimited right of enhancement of the rents of the ryots possessed of a right of occupancy. The zemindars are most frequently content if they can get extra cesses and benevolences, illegal, but which the ryots certainly prefer to enhancement of rent §

The permission which, as shown above, was given by the Lieutenant-Governor to the ryots to withhold payment of rents, indicated a grave misconception, in so far as tenant-right in Bengal is always conditional on the payment of the rents. Some time after the Proclamation referred to, the Government decided to impose certain cesses as well upon the richest landlords as upon the poorest cultivators—the Road and Public Works cesses—and it was deemed expedient to lay the trouble, risk and odium of collecting these taxes upon the zemindars. The zemindars knowing that resistance was hopeless, and European modes of agitation not being familiar to them, consented to bear the burden, but only upon condition that facilities should be given them to collect their dues from the tenants. No reference was made to the laws of 1795 and 1799, which had been repealed in 1859; none whatever to the Pubna riots alluded to, which, however clearly traceable to the changes in law and the interpretation thereof, were unjustly set down against the zemindar's demands for rent, nor was any prayer ventured to undo the mischief created by a public proclamation, which

\* Administration Report, 1872-73, Part III, p. 81.

† Bengal Administration Report, 1871-72, Part I, p. 170.

‡ Do. do. do. p. 180.

§ Do. do. do. pp. 23-24.

openly justified a wrongful act and a conspiracy for the purpose. But the only prayer was that, while additional burdens were being imposed by Government, the zemindars might be put in the way of discharging them without loss to themselves. And the Government promised to afford them the facilities, the need of which even now the Law Member acknowledges, though unfortunately for the zemindars, only as being beyond the reach of his talents in law-making.\*

At this very time the question of fair rents had also come to engage the public attention with reference to Act X of 1859. It has been shown that, according to that Act, fixity of a kind was to be assumed as intended to be given to those tenures which continued to be held for 12 years without any documentary evidence to prove the contrary. This construction of sections 6 and 7 of that Act, quite in accordance with the hitherto prevailing policy of encouraging the exchange of leases between landlords and tenants, would also reconcile them to the terms of the permanent settlement. But somehow or other economic rent, as defined in English books, was taken by Sir Barnes Peacock to be the fair construction of the expression "fair rates" in that Act. Now, negative to this connection would simply be that fair rents and rack-rents were not necessarily identical. But it seems that the learned arguments of Sir Barnes called forth only an emphasis on the contrary positions, that fair rents should always be less than rack-rents.

The next step (shown before to be as much an assumption as the foregoing) was that the difference between the two kinds of rent had been given by the legislature to the creatures of Act X in contravention of the terms of the permanent settlement; and hence the opinion that section 6 of that Act ought to be repealed.

Mr. Justice Trevor, in the very judgment which has determined that the fair rent of section 6 is less than the rack-rent of Ricardo, held that "the new law" i.e., the Act X, "interfered with the right of the zemindars as laid down in the legislation of the last thirty years." This was endorsed by Justices Lock, Bayley, Jackson, and Glover. Elsewhere Justice Trevor declared it "a great infringement of the law previously existing." And Chief Justice Peacock and Justice Shumboo Nath Pandit and others suggested its abolition, the Chief Justice basing his recommendation among others on the ground that "it interferes with the just rights of the zemindars, at least in the permanently-settled districts, by vesting rights of occupancy in the ryot which had no previous existence." And even down to this day, Chief Justice Garth finds it "impossible to deny that it operated as an invasion of the landholder's rights as conferred upon him by the permanent settlement."†

Under these circumstances, the landholders were least prepared for the views of Bengal Government which had been carefully withheld from the public, or for those announced by Mr. Ilbert in the Council Chamber on the 2nd of March 1883. Hence, when a certain native member of the Bengal Council was asked to give his consent to a general revision of the rent law, on the ground that the question of arrears of rent was often found mixed up with that of assessment and enhancement of rents in general, no hesitation was shown on the part of the landlords of Bengal to accede to the proposal. But if circumstances like these can justify the demand of some Government officers, that the zemindars must make equivalent sacrifices to the ryots, who had nothing whatever to say, there does not appear any reason why the zemindars should not urge, in furtherance of their prayer before Parliament, that the promises given in 1871 and 1877, about speedy realization of arrears of rent, might be allowed to stand over, along with the newly remembered one of 1793, to make laws for the protection of all classes of subjects.

#### 6.—The Rent Commission.

The consent of the landholders for a general revision of the rent law having been obtained, the Rent Commission was appointed by Government; and so long as their labours were confined to preparing an analysis and digest of the existing law, the public were not apprised of what was intended by the Government. But Mr. Field, the most energetic member of the body, supplemented his digest of the Rent law with certain notes, and especially one on the question of free sale of tenures. In that note he had occasion to notice the argument that it was discretionary with the landlord to withhold fixity of tenure from their tenants, and that by arbitrarily making all occupancy tenures transferable against the consent of landlords, the legislature might virtually stimulate the landlords to exert themselves with a view to prevent the acquisition of occupancy rights by tenants. And the following characteristic solution given to this question, in the teeth of section 9 of Act VIII of 1869, clearly showed how dispassionate and judicially disposed the most active member of the Commission was:—

"The 13th argument (stated and numbered by Mr. Field himself) partakes in some respect of the nature of a threat, and cannot therefore carry much weight. The great majority of the ryots have already acquired the right of occupancy: and in respect of those who have not, the legislature is not likely to be much moved by the fear of that being done which it has permitted to be done, and which it could prevent from being done by a stroke of the pen."‡

To this the following may well be contrasted:—

"Justice B. Jackson, in his minute on Act X, said with reference to section 6: 'They (the zemindars) will not be affected by it. They have it in their power to put an end to every right

\* Ilbert's speech, Abstract of Proceedings, 2nd March, pp. 119 & 124.

† See Rent Commission Report, 1st edition, Vol. I, pp. 105, 96, where references to the original are given.

‡ Field's Digest, p. 177.

of occupancy which exists on their estates, as the tenures fall in, if they will only take care to let out the tenures again on term leases. The only landlords who can suffer by the law are those who pay no attention to their estates, and who disobey the direct injunctions of the legislature under which they hold their estates."

Again, the President of the Commission, speaking of his votes as given in it, has since thought proper to record "that on many points I preferred to give my voice according to the opinion of the moment rather than prolong discussion, being satisfied that the point... would meet with full further discussion before the time came for taking action on it."\*

After this the following from Sir Richard Garth would be quite significant of the constitution of the Rent Commission:—

"I have taken the pains," he says, "to go through all the minutes of the committee meetings, and I find that out of thirty-five discussions which took place, Mr. O'Kinealy in every single instance voted in favour of the ryots and against the landlords, and Mr. Mackenzie did so in almost every instance."†

The fact is, the Commission was from the very beginning furnished with a standing majority against the landlords. And when the Bengal Government sent its draft Bill to the Government of India, both the Bill and the covering letter No. 849T, dated 27th July 1881, were kept a dead secret from the public. Referring to this, Sir Richard Garth observes:—

"I am afraid that individual Judges have, like myself, felt a disinclination to oppose what were generally known to be the strong views of Sir Ashley Eden in favour of the ryots until those views had assumed something like a definite shape."

"The Bill, as drafted by the Rent Commission, differed in many important respects from that which has since been prepared by Mr. Reynolds, and we are now in still greater uncertainty as to what is really proposed, because we learn that Mr. Reynolds' draft was again materially altered before it was sent to the Government of India, and that it has now been submitted with still further alterations for the consideration of the Secretary of State."

The third draft settled by Sir Ashley Eden was the one sent to Her Majesty's Secretary of State for India‡ with letter dated 21st March 1882, so that the secrets of the Executive Department appear to have been very carefully kept even from the Chief Justice of Bengal, whose minute is dated 6th September 1882.

"It is true," continues Sir Richard, "that through Sir Ashley Eden's kindness I was allowed a perusal of the Bill before it left the Bengal Office; but as this was for my private information only, I do not feel at liberty to discuss it publicly in other shape than that in which it was presented to the public."

"This method of dealing with important legislative measures, however much it may be in accordance with practice and precedence, is, I venture to think inconvenient. It places myself and others... in a position of considerable difficulty, and it seems hardly fair to those classes of the community whose interests may be most seriously threatened"§

Sir Richard is mistaken: there was no difficulty, for he was not let into all the secrets. Elsewhere he says:—

"In the numerous notes and minutes which this discussion has elicited, I find some pains have been expended upon the argument that the Government, in case of necessity, has a right to interfere with vested interests, although created by so solemn a compact as that of the permanent settlement, and it has been further argued that in the settlement itself the Government has expressly reserved such a power of interference."

"For my own part I consider this argument quite superfluous. Any Government, in case of real emergency, has a right, so far as it is necessary, to interfere with vested rights to whomsoever they may belong, or howsoever they may have been created. But then I take it to be equally clear that *without some such actual necessity* no Government is justified in interfering with the vested rights of any class of its subjects."||

But to Mr. Libert the aspect of affairs is singularly different.

"There is," he says, addressing the Legislative Council, "no great difficulty in showing that this so-called obstacle to legislation for the protection of the tenant is no obstacle at all: that it is a mere phantom barrier which, the moment that it is approached, dissolves into thin air."¶

In a note, however, prepared by Mr. Tupper under orders of the Government of India, the summarised objections to the contemplated policy are met by such remarks as these— "A conclusion is not condemned because it is theoretical, the real question is whether the theory is right or wrong. Applied political economy is only another name for statesmanship." And referring to the objection of breaking through anachronising customary and traditional relations, a fitting answer has been found in the assertion "they are the concomitant of foreign and civilized dominion." Before radical views of this kind dissolution of the phantom barrier of a permanent settlement into thin air was no great wonder certainly! The wonder is that a foregone conclusion of this kind has been subjected to such long delay and such expensively protracted discussion.

With all this endeavour, however, the full consent of the Secretary of State could not be obtained, and even after repeated communications. At last the Viceroy telegraphed on the 22nd December 1882: "We shall therefore prepare a Bill in accordance with general

\* Bengal Government Report, vol. II, p. 410.

† *Hind o Patriot*, office edition, p. 11.

‡ See Blue Book on the subject, p. 1.

§ Minute, pp. 1-2.

|| Minute, p. 3.

¶ Abstract, p. 90.



views expressed in Lord Hartington's—17th August." And to "this discussion" the Secretary of State has given his sanction by telegram dated 30th idem; so that it does not seem likely that the Bill begun in January 1883, and presented in Council on the 2nd of March, has yet received the Secretary of State's sanction. And since the facts and arguments presented to the Secretary of State are not sound, and since, besides, the directions from England have not been duly followed in the fourth Bill prepared by Mr. Ilbert, the measure stands self-condemned.

One thing besides is deserving of notice. The statesmanlike solutions offered to problems in applied political economy have now run up to four successive Bills, and in each case a re-examination of past labours have led to fresh solutions being attempted of well-known problems in the society of barbarian subjects. And Mr. Ilbert has announced in fervid scriptural language "sufficient for the statesman if he can grapple with the problem of to-day, and for the distant future he must leave posterity to provide." The term posterity in the present case is obviously meant for successive Law Members going to and from England every five or ten years at most: and yet it was not deemed necessary to collect any evidence for the purpose of the present legislation.

#### 7.—The Bill.

The petition to Parliament avoids entering into details, for what is prayed for is not how the sections of the Bill might be improved, so as to make the measure perfect, but that a cursory view of the principles and policy of the intended legislation would lead to its rejection. At each successive step in the course of four several drafts, the law-maker has been haunted by one fierce desire to get the ghost of a Bengal zemindar down under the power of the law. Consequently there has been remarkable small leisure to judge how the law would have to be administered. And after many long efforts the definition of the *ryot*, for whom all this trouble is claimed to have been incurred, is left in the form of a negative proposition. The petition avoiding all details of this kind notices only the graver changes in the rent law, of which changes, the inner history is, however, of a remarkable kind. It will be seen that although, after much opposition, the sanction of the Secretary of State was obtained to the introduction of the Bill, yet an endeavour has been made to defeat the declared wishes of Lord Hartington, to say nothing of the misleading reports submitted to him in support of the favourite project of Government.

The principle of the right of occupancy, as created by the Act X of 1859, has been already noticed at sufficient length: its greatest safeguard on behalf of the zemindar were sections 7 and 21 of that Act. All these were proposed to be taken away, for the first time, by the Rent Commission. But the Government of India in reporting upon the subject has coolly ignored the point, mentioning only "that they proposed to institute a new class of ryots, *viz.*, those who had held land for three years or more." The simple plan of making the law acceptable to the people did not commend itself to the authors of the measure, and consequently "a sharply drawn limit of time" was rejected for the purpose of defining the blessing which was intended for this unknown class of people. Sir Ashley Eden had gone beyond the Rent Commission, and had proposed "the resident ryot" instead of the three-year old proprietors. "The Lieutenant-Governor's proposal," so runs the letter to the Secretary of State, "amounts in fact to the creation of an artificial village, residence and cultivation within the boundaries of which shall entitle all settled ryots to rights of occupancy in their lands." But it was objected to by the Government, because they thought "many zamindars will utilise to the utmost extent any opportunity of annihilating the claims of the ryots which may be afforded by the law." They "fully admit the absurdity of supposing that zamindars could cause the great majority of their cultivators continually to shift about from one village or even from one set of fields to another." Nevertheless they "think that it is contrary to public policy (!) that the zamindar should find it to his benefit to oust his ryots or any of them either from house or land."\* Strange that in a public document of so great importance such an observation should find its way, while the avowed object of the Government is elsewhere set forth as follows:—"We do not conceal from ourselves that either proposal (that of the Government of India or the recommendation of Lord Hartington) will meet with very serious and painful opposition. Ours will be the more distasteful to the zemindar's interest, but the reason why it will be the more distasteful is obvious."† The only way to reconcile these observations is to suppose that the Government believe either that the zamindars seek to injure their tenants and to elude the law, not for their own interests, but only for the destruction of their tenant's interests, or that whatever is distasteful to zamindars' interests is most in accordance with "public policy." The meaning, however, will not be far to seek; for every body knows whose interests are being most sought to be destroyed, by whom the endeavour is being made, and how few the opportunities are of these English officials to test their schemes by a normal amount of self-interest. Accordingly, the Government of India preferred "simply to take the land as the basis of the occupancy right and to declare that all ryots holding or cultivating ryoti land shall have a right of occupancy therein. The occupancy right would then attach to all ryoti land without exception, that is to say, to all land that is not khamar or private land."‡

The Secretary of State has disallowed this:—

"I have to observe," he says, "that whatever may have been the exact position, actual or legal, of the bulk of Bengal ryots prior to the permanent settlement, there can be no doubt that their customary rights at best included the right of occupancy conditional on the payment

\* Correspondence, p. 22.

† *Ibid.*, pp. 59—60.

‡ Correspondence, p. 25, para. 62.

of the rate of rent current and established in the locality. To this extent therefore I concur in your proposal to restore the ryots to their original position."

But as regards the proposal "to take a classification of lands as the basis...of the occupancy right," His Lordship says:—

"9 After careful consideration of your arguments, I am not satisfied that a measure is advisable which appears to me to make so great and so entirely novel a departure from both the ancient custom and existing law of Bengal."

His Lordship then proceeds to give his own suggestion to the effect "that every *resident* ryot shall have a right of occupancy in the land which he occupies and *pays rent for*, and that a resident ryot shall be one who, or whose ancestor, has occupied any land in the village or estate for 12 years." This is of course somewhat vague and open to many of the objections previously set forth. But in any case it leaves no room for several of the provisions in the Bill, and more especially for the ignoring of the principle that occupancy rights are at best conditional on the payment of rent, and cannot subsist if the zamindar has unnecessarily to go to court for its realization. The instructions evidently do not justify such a provision, as for instance, that "all land shall be presumed to be ryot land until the contrary is proved," *i. e.*, proved to have been "the landlord's private land for twelve continuous years before the commencement of this Act." (Sections 5 and 6 of the Bill.)

In answer to the Secretary of State's Despatch quoted above, the Government of India wrote on the 17th October 1882:—

"The number of unprotected ryots will, under Your Lordship's scheme, be thereafter a constantly increasing number. Every acre of land which becomes vacant, whether by pre-emption on the part of the landlord, by death without heirs, &c., falls out of the protected class, and instantly becomes a subject for a renewal of the evil contest. The landlord's interest is immediately concerned in preventing the settlement on such land of any existing cultivator of the estate or village, and in defeating as regards tenants from outside the accrual of occupancy rights by 12 years' prescription on such land."\*

The reply to this despatch even was not favourable to the views of the Government of India: and yet we have the following in section 56 of the Bill:—

"Notwithstanding any contract to the contrary when the landlord...acquires the occupancy right in any of the land...any person thereafter holding the land as a ryot shall have a right of occupancy in respect of it."

A perusal of the Secretary of State's despatch, as well as of Mr. Ilbert's speech, would lead one to think that, at all events, the legislature will not permit any *reduction* of existing rents. The Bill, however, shows a different sort of arrangement. Section 81, clause 6, fixes the maximum limit of produce-rents positively *below* the customary rates in many places, and section 82 is so far dubious in its wording, that it is impossible to say whether clause 2 of section 61 will not operate so as to further reduce the limit by 60 per cent. of what would be due to the landlord under the low limit given in section 81, clause 6.

The redistribution of property, as apprehended from the Bengal Tenancy Bill, is mainly due to the following provision:—

Firstly, as regards Fixity of tenure:—

(a) The old occupancy ryots are being placed above the restriction that punctual payment of their dues is indispensable to the continuance of their rights: the value which would be imparted to the occupancy right in consequence of this change would be so much taken from that of the landholder. Nay, it will take away far more from the zamindar than it will give to the occupancy ryot.

(b) The occupancy right is further extended in a peculiar way: A tenant holding the right in respect of a square yard or two of land is to have that right extended to any quantity of land, even hundreds of acres, that he may afterwards lay his hands upon.

This provision converts a right in land which was traceable to duration of occupation, into that of a personal status, *i. e.*, privilege attaching to the man who happened sometime in his life to have held a plot of ground for 12 years within the indefinite limits of a village or an estate.

And this personal status of the settled ryot is again made peculiarly obnoxious to the zamindar by the disability imposed on him, whereby he is never to acquire the privileges of a settled ryot, neither for money nor from customary laws.

(c) Then the "well-known distinction" which, in the words of the Secretary of State himself, is "deeply rooted in the feelings and customs of the people not only of Bengal, but in most parts of India," between resident and absentee tenants,—a distinction considerably affected by Act X of 1859, is going to be still further relaxed, to the certain increase and possible universality of absenteeism among the rent-payers subordinate to the landholders, and the consequent detriment to agricultural interests and to the much needed facilities for collecting the rents.

(d) A further instance of redistribution is the provision about compensation for disturbance, in the case of ordinary ryot, which amounts to a penalty upon the exercise of just rights by the landholders.

(e) Lastly, the land is proposed to be cut up in two parts, so as to divest the zamindar of all his proprietary rights in respect of one part, and in the other to make his position as intolerable as what the effect given to provisions of the Act X had generally led to. And for

all this the zamindar is required to bear half the cost of a tedious and most expensive process of land survey, while his rights have to be surrendered through a nominal and summary investigation. In respect of part No. 1, the zamindar is proposed to be denied full rights even when the land should remain unoccupied, and although the revenue demand of the Government in respect of such unoccupied land was not in the least to be relaxed. If he lets it out to a tenant, he must not get the full benefit of what terms he might otherwise obtain, but the tenant must have that benefit even when willing to part with all or some of it, and for valid reasons; and lastly, this lien of the tenant classes will continue for a period of twelve years over all such lands, and the zamindar must not have anything in return for that lien, whether from Government, or from those who enjoy the lien. And in regard to that part of the land which it is proposed would not be especially the zamindar's private land, his rights would have to be established by twelve years' continuous occupation, and even then he would remain liable to be eased for ever of what he thus re-acquires, by simply letting a tenant into possession for the same twelve years.

Secondly, in regard to Free Sale

The landlord is going to be deprived of all his most important rights: it will deprive him of two of his most ancient rights, viz, that of re-entry in case of non-payment of rent, and that of choosing his tenants, it will require him, for the realization of his rents and the punctual payment of his own dues to Government, to look to absentee tenants of uncertain character and all this at inconvenient distances; so that it will make those absentee tenants practically the lords of the soil, leaving all the risks and responsibilities upon the annuitant landlord. Here, too, the landlord is going to be imposed with a grave disability that he cannot acquire, even by purchase, all the rights accorded to any other purchaser for equal value. And while so much is being taken from the property of the zamindar, it does not appear that, even in the expectation of the Government, the ryot is likely to derive much substantial benefit.

And, thirdly, in respect of Fair Rents:

The maximum limits prescribed are inordinately low, and in some cases the limits will lead actually to a reduction of existing rents.

Referring to the question of transferability of tenures, the Government of India write to the Secretary of State.—

"Para. 93. So far we have considered the landlord's interest." To this the flat contradiction of the landlords may be entitled to some weight, as coming from those who ought to know their interests better than the authors of the sentence quoted above. Be that as it may, the paragraph then runs as follows—

"But the protection of the ryot is a matter of much greater difficulty. The money-lender by means of a mortgage might appropriate the whole profits of the holding; or by foreclosure or purchase he might become possessed of the occupancy right, making a sub-lease to a cultivator, or the occupancy ryot of to-day, finding his interest profitable, might gradually disuse cultivation, sub-letting his land to an under-ryot at an exorbitant rent. In all these cases the actual cultivation of the soil would, unless provision be made to the contrary, tend to fall into the hands of a rack-rented peasantry, the fruit of whose labours might be reaped by speculators or absentees or mere annuitants idly consuming the agricultural yield in unproductive expenditure. A generation hence, it may be said, the present circumstances will repeat themselves; the present settled ryots will have become to all intents and purposes tenure-holders, or they will have parted with their rights in favour of non-agriculturists, and the Government will again be moved to interfere for the protection of new masses of peasant occupants against seldom (serfdom?) and oppression."\*

It is hard to say whether language much different from this would have been needed, if the ryots of Bengal had taken to the doctrines of communism and sought to help themselves to the property of the zamindars by violent means, leaving the future to take care of itself.

It is well known that in Ireland it has become necessary to override the contractual relations of people: the reason was that cottier rents there rose above rack-rents. In Bengal the danger is said to be apprehended. No evidence has, however, been adduced, and no statistics collected; but on the contrary competition rates are reported by Sir Ashley Eden to be altogether unknown. Nevertheless the contracts of private parties are proposed to be upset, and the rule about exchange of leases between landlord and tenant, on which the framers of the permanent settlement laid so much stress, is going to be entirely relaxed, because in the opinion of the Government of India the principle dated from the political disturbances of 1857! It would be easy to set right such inaccurate statements of fact: but it is not easy to reach the feeling which could record the following. Mr. Tupper says:—

"Mr. Reynolds remarks that the British Indian Association strongly disapproves this section, and continues, 'it is natural that they should do so, for without this section the other provisions would have little practical effect.' An unfettered contract law, it is stated, is the basis of civilized life and the primary condition of moral and social progress. The aphorism is worthy of Joseph Surface, and I regret that the Association should have stooped to employ an argument which they must have known to be altogether sophistical. Free contract between ignorance, poverty and improvidence on the one side, and cunning, wealth and power on the other, is likely to result in the conclusion of a somewhat inequitable bargain."†

Whether or not the British Indian Association have belied their conscience, or raised a scandal against themselves, the principle, if openly advocated, would naturally raise the

\* Correspondence, page 29, p. 98.

† Tupper's note, p. 108.



question, how far the high revenue assessment of  $\frac{1}{10}$ ths on the rental was consistent with customary law, and why the engagements entered into by Government in various matters would not cease to be binding upon the swarthy millions of India. It is, however, a relief to find the following from the pen of the same précis-writer who has approvingly quoted the generous reference to Joseph Surface:—

“But are the landlords in respect to all classes of land, whether *ryoti* or *khamar*, and the occupancy ryots in respect to their own holdings, to be universally refused the advantage of perfect liberty of contract with their lessees? Is the economic benefit of unfettered discretion in dealing with the soil to be banished, so far as the law can expel it from the whole valley of the Ganges from Sarun to Backergunge? If so, how long is this state of tutelage to last? Has the educational value which belongs to the free exercise of authority within a limited field been overlooked? Let the necessities of the time [there is nothing wrong in the *times* as the facts about competition-rates of rent will show—necessities of *cases* of individual misconduct are always subject to judicial control] be met by interposition to deliver the cultivators [say rather, individual ones] from injustice and to compel them to render to their superiors their proper dues. But do not eviscerate the scheme of reform by extracting the principle of growth which might be retained as part of it. *This portion of the Bill omits, it may be thought, the germ of social development*”\*

This retrograde movement in regard to contractual relations between people may well be contrasted with the too-forward movement in respect of compensation for improvements. This last is not needed, for the simple reason that agriculture has not yet advanced so far as to take up all the culturable land, much less to require improvements for intensifying the productive powers of the soil.

“Under the influence of external peace” and other causes, says the Board of Revenue, “population has increased and cultivation extended over vast tracts which lay waste at the end of the last century. It should, however, be observed that improvement in the *modes* of culture is not conspicuous. The demand for land has not in most parts yet reached the point at which the enhancement of productive powers becomes the indispensable condition of profitable occupation.”†

The fact, if dispassionately considered, will explain most of the phenomena in the agrarian affairs of the country. Mr. Ilbert supposes that the best interests of our society would be conserved because “there is nothing in the Bill to prevent a landlord acquiring an occupancy-ryot from keeping the land in his own hands and cultivating it by his servants or by hired labourers.”‡ But a greater mistake could hardly be committed in the present state of Bengali society. If the rich zemindars would take to agriculture and convert their ryots into day-labourers, the European labour-difficulty would make its appearance in India with the most awful consequences. Matters may possibly be moving in that direction. The population difficulty must perhaps arise in course of time: and between the pauper life of day-labourers and cottier life of Irish tenants there would not perhaps be much to choose. But in any case the choice would not lie in favour of the former. Besides, if the life of hired-labourers is all that is intended by our beneficent Government for the poor of this country, that life would be more tolerable under the existing zemindars than under the vast body of (occupancy) tenure-holders now in contemplation. A mistake of the very same kind was committed when in 1793 the members of the British Indian Government advocated the growth of landlords more energetic than their predecessors of the last century. These very landlords have to bitterly rue their fate to-day, and under them, it must be admitted, the tenants have not fared better than under those who had not to think of the interest due to capital invested in the purchase of zemindaries, and whose ruin was compassed by tenants of olden time and by the self-same method of withholding payment of fair rents. Agricultural improvements cannot be fostered by Government, least of all by helping to convert the life of agricultural tenants into that of agricultural day-labourers. But when improvements will become necessary, the richer zemindars would perhaps be found more efficient than the money-lenders of humbler means, who are calculated to acquire under the Bill the rights of occupancy and the status of settled ryots. These considerations probably have not escaped the authors of the measure. But in that case their only justification would be the laudable desire now to redistribute the property of zemindars between the favourites of the day—the settled ryots—just as they leave it to their successors to do the like by those favourites a generation hence.

The grandest panacea, however, for all existing evils with these Indian statesmen is “to take up the question of introducing throughout Bengal the system of village records and field surveys, commencing with Patna Division.”§ This was written on the 21st of March 1842. On the 17th of August the Secretary of State, while admitting the advantages of the measure (of course only from an *ex parte* statement of facts), could not after all “avoid the apprehension that the difficulties may prove greater than the Government of India anticipate.”||

Some enquiries, it seems, have been subsequently instituted. And we find Mr. Finucane reporting on the 10th February, with reference to a small tract of land called No. II.—

“That the number of (rent) rates varies in one village from a maximum of *ninety-five* to a minimum of four, and that the average number for eight villages is thirty-four.

“That the amount of the rates varies from a maximum of Rs. 10 (=1£) to a minimum

\* Tupper's note p. 175.

† Abstract, p. 105.

‡ Correspondence, p. 44.

§ Board's Memo., p. 18.

|| Correspondence, p. 55.

of 10 annas (15 pence) in the same village, and for all eight villages from Rs. 15 (£1 10s) to two annas (3d.) per (unit of) 3,600 square yards."§

Another officer reports of the tract to which he was deputed —

"There was no evidence to prove that the rents of those estates had varied since the permanent settlement. The proprietors of 54 villages on being called on to produce the papers whence present and former rates of the lands in their possession could be ascertained have filed petitions" saying "that they had no [such] papers."||

Even Mr. Ilbert has had to confess his "apprehension that in many parts of the country the framing of a table of rates will be impossible." He also adds, "that in many instances the mere framing of a table of rates will not suffice to settle the disputes between landlords and tenants." But, nothing daunted, he has, "to provide a remedy," inserted in the Bill a chapter which is entitled,—"Of the settlement of rents by a Revenue officer."¶ The revenue officer has, however, had to be empowered to "decide questions which more properly appertain to the jurisdiction of the civil courts, and ought not to be finally decided by any other authority."\*\* Therefore, again, to civil courts the litigants are directed to go.

What measures will be hereafter necessary to undo all this mischief the future alone can say.

No. 972 T. R. dated Darjeeling, the 27th September 1883.

From—A. P. MACDONNELL, Esq., Offg. Secretary to the Government of Bengal,

To—The Secretary to the Government of India, Legislative Department.

I am desired by the Lieutenant-Governor to address His Excellency the Governor-General in Council on the subject of the Bengal Tenancy Bill, which was forwarded with your letter No. 11C. of the 16th March 1883. The Government of India have already been advised of the publication of translations of the Bill in the *Bengal* (1), *Behar* (2), and *Urya Gazettes* (3),

(1) 24th April 1883.

(2) 4th May "

(3) 17th " "

on the dates mentioned in the margin, and I am now to say that, with a view to give as wide publicity as possible to the proposed measure, copies of the Bill, in English, and in the Bengali, Urya, and Hindi vernaculars, were made available to all public bodies and private individuals throughout these provinces. Full publicity has thus been given to the Bill, and the result is apparent in a vast quantity of careful and detailed criticism, which cannot fail to have an effect in moulding the ultimate form of the measure. Copies of the various reports and memorials received by this Government during the last six months in connection with the Bill have been from time to time forwarded to the Government of India; but I am to take this opportunity of submitting in a collected form all the more important correspondence which has passed between this Government and those interested in the subject since Mr. Rivers Thompson assumed his present office in Bengal.

2. It has been recognised that the Report of the Rent Commission, in itself a most exhaustive State paper, was subjected to a degree of careful criticism, unprecedented in the discussion of public questions even in this country. "No measure of late years," says the representative organ of zemindari interests in Bengal, "has attracted so much public attention as this. It has been discussed throughout the country, and representations have poured in upon Government from all quarters. The discussion which has followed the proposed Rent Bill is in marked contrast to what took place when the Rent Bill of 1859 was passed. The only representation of any note which was then submitted to Government came from the British Indian Association; but even that vigilant body did not then show sufficient activity in the matter. It contented itself with submitting a memorial to the Legislative Council. It did not then take any steps, as it has done on the present occasion, to organize public opinion on the subject. But the times have changed. The Government has now become more alive to public opinion than ever. Sir Ashley Eden has invited expressions of public opinion from all quarters. He asked district officers, both executive and judicial, to express their opinion on the Bill. He invited the public Associations to discuss the Bill. He appealed to the leading men in the districts to consider the Bill. He offered every facility in the way of discussion. He caused the Bill and the Report of the Commission to be translated into Bengali, Urdu, and Hindi, and had the translations extensively circulated. He went further, and deputed Mr. Reynolds to tap the great centres of mofussil opinion. Thus ample opportunity has been given to the public for a thorough discussion of the Bill."

3. That is an accurate description of the extent to which the Reports under notice had been subjected to criticism up to the early portion of 1881. Later in that year those criticisms were examined in Mr. Mackenzie's letter No. 849 T. of the 27th July, a valuable addition being made thereby to the literature of the subject. Afterwards the Government of India, in their despatch No. 6 of 21st March 1882, reviewed the entire discussion in its historical and economical aspects with a detail and fullness remarkable, the Lieutenant-Governor may be permitted to say, even in an enquiry which has been distinguished throughout by ability and research. It may be accepted therefore that, even before the publication of the present Bill, the information accumulated on the relations of landlord and tenant in Bengal was almost complete.

§ Letter from M. Finucane, Esq., on special duty, to the Secretary to the Board of Revenue, paragraph 5 (dated 16th February 1883).

|| Baboo Parbati Churn Dey, to the Revenue Board, No. 114, dated 6th February 1883.

¶ Abstract, pp. 114, 117.

\*\* Abstract, p. 118.

4. In a petition dated Calcutta, 1st July 1883, to the House of Commons, the landholders of Bengal and Behar, while acknowledging that the fullest opportunities had been given for discussing the original draft of the Bill, complain that similar opportunities of examining the Bill finally submitted to the Government of India by this Government had been refused. This complaint is, in the Lieutenant-Governor's judgment, unreasonable. The Bill submitted by the Bengal Government for the consideration of the Government of India and the Secretary of State embodied the modifications of the Rent Commission's original draft, which seemed to Sir Ashley Eden to be called for by the ordeal of criticism through which that draft had passed. Those modifications might not have been (as in fact many were not) accepted by the Government of India, and therefore to invite criticism on them before they had been approved by that Government would have been a waste of time. The Bill now before the Council is the Rent Commission's draft moulded into its present shape by the Governments of India and Bengal in the full light of public opinion, and this Bill has now been before the public for six months. Its publication has added to the mass of information, extant on the Rent question, a further voluminous expression of opinion on every point of principle and on most matters of detail. The opinions now expressed, indeed, are in many instances but repetitions of what had been said before; but this was to be expected, for the Bill in its main features is the natural outcome of the preceding discussions: while, even on such a wide subject as that in hand, there are limits to human inventiveness. The repetitions, however, are valuable as showing that little more is left to be said upon the subject. A few reports, indeed, are still expected from local bodies or individual officers; but the Lieutenant-Governor thinks it undesirable to postpone any longer the expression of his own views on the main points of the measure. With questions of detail or verbal emendations of the Bill he does not propose at present to trouble the Government of India, as ample opportunity will no doubt be afforded him, during the progress of the Bill through Select Committee, of making such communications on minor points as circumstances may require.

5. If the Lieutenant-Governor thinks it undesirable to consider minute details on this occasion, still less does he wish to follow those advocates of the zemindari party, who question the propriety of the measure as a whole. If there really be any persons who, in the face of the overwhelming accumulation of evidence afforded by the discussions of the past ten years, still question the necessity of legislation on the broad lines of this Bill, then it is quite hopeless to expect that anything the Lieutenant-Governor could say would convince them. Recent experience in these provinces has accentuated the necessity for legislation which has already been recognized most distinctly by the zemindars themselves; and Mr. Rivers Thompson therefore hopes that no time may be lost in bringing to a close a controversy the settlement of which is essential to good administration, peace, and progress in Bengal. With these preliminary remarks, I am now to state the views of this Government on the chief provisions of the Bill; and from the statement I shall make it will be seen that, while the Lieutenant-Governor must express dissent from some points of the measure as drafted, he is able to give it, subject to the acceptance of certain modifications, his earnest support.

6. In the first place I am to offer a few observations on the propriety of legislating for the whole of these provinces in one Bill, as the proposal to do so meets with some opposition. It will be within the knowledge of the Government of India that doubts on the point, suggested at an early stage of this discussion, were formulated by Mr. Reynolds in the note which is printed in Appendix IV, Volume I of the Report submitted by the Bengal Government in 1881; but Sir Ashley Eden, on full consideration of the subject, thought separate Bills unnecessary, believing that "if his proposals for basing the occupancy right on a broad and popular basis throughout the whole of the Lower Provinces met with approval, and if the improvements suggested by him in the law of distraint were accepted, the matters calling for exceptional treatment in connection with Behar would be practically reduced to two, *viz.*, the disposal of claims to *zeraat* lands, and the regulation of the procedure for the regulation of rents in kind."

To these remarks of his predecessor, as well as to the arguments advanced by Mr. Reynolds and others in favour of separate legislation for Bengal and for Behar, the Lieutenant-Governor has given his careful attention; and while he admits that differences do exist between both portions of these provinces in some respects, he is not prepared to say that they are such as call for divided treatment. It is true that in Bengal the demand for legislation came, in the first instance, from the landlords, who urgently pressed for increased facilities for enhancing and realising rents, while in Behar the cry was from the ryots for protection from illegal enhancement and ejectment. It is also true that in Bengal the extent to which sub-infeudation has gone produces difficulties in adjusting the mutual relations of proprietor, tenure-holder, and ryot, while in Behar those difficulties are less developed. It is further true that in some districts of Behar the system of corn-rents is far more prevalent than in the districts of Bengal Proper. But granting all this, an examination of these points of apparent difference will show that the differences are of degree, rather than of essence; while in Bengal we have well-marked instances of the same evils which depress industry and disturb the public peace in the Patna Division. If ejectment, as a means of extorting enhanced rents, widely prevails in Behar, evidence is not wanting that a similar practice is in vogue even in the most forward district of Bengal. Does a Behar zemindar or thikadar attach the whole crop of the ryot to compel payment of an increased *jumma* or of legally irrecoverable arrears?—



the Bengal zemindar applies corresponding pressure through suits for monthly kists, or through some other legal device, in order that he may (as one recently ventured to tell a sub-divisional officer) "by hook or by crook" raise the rents and break the rates. Where Behar landlords shift their ryots from field to field (as they have admitted they do) to prevent the growth of prescriptive rights, the Bengal zemindar can apply no less potent pressure, if one may judge from the "agreements" which are registered in such widely different districts as the 24-Pergunnahs and Mymensingh. In Bengal and Behar alike the efforts of landlords are directed towards the same end—enhancement of rent, prevention of the growth of tenant-right, and its destruction where it has grown up; and if in Bengal they are not so successful in their efforts as in Behar, that is not because of any dissimilarity of aim. The same evil demands the same broad line of treatment in all portions of these provinces. To prescribe every variation of detail to suit local circumstances is not within the compass of any law; these variations must be worked out in practice by the applications of the broad principles of the law to individual cases by the courts or other authorities entrusted with the administration of the Act.

7. *Chapter I.*—The negative character of the definitions of "tenure" and "ryot" has been unfavourably criticised. The difficulties in the way of a positive definition, especially those to which the Rent Commission draw attention in paragraph 20 of their Report, are not ignored, but it is clear that the want of some definition which might afford a presumption as to the nature of the right leads in practice to serious embarrassment from which all landlords suffer. The Board of Revenue even go the length of ascertaining that any "rule of thumb" procedure which would enable a tenure to be distinguished even presumptively from an occupancy holding would be a great relief to landlords, and a help to the revenue administration of the province.

On such a question as a legal definition of this sort, the Lieutenant-Governor has much diffidence in offering any opinion; but it seems to him that there is reason for the dissatisfaction expressed with this portion of the Bill, and that a definition is more likely to avoid difficulties than the absence of any definition at all. One of the greatest difficulties to be met with in dealing with the rent question in Bengal is the question of subletting. It is possible that by accurately defining the class who, as occupancy ryots, will be entitled to sublet, that difficulty may be lessened; and, therefore, the Lieutenant-Governor would suggest that while those who retain a substantial cultivating interest in the holding should be regarded as occupancy ryots, all those owners of occupancy rights who never got possession for the *bona fide* purposes of cultivation, or who, having originally been cultivators, have divorced themselves from direct connection with, or responsibility for, the cultivation of the holding, should be classed as tenure-holders. It is to be remembered that the late Supreme and present High Court have declared "any tenure by title deeds or by the custom of the country, transferable by sale," to be an under-tenure (Indian Law Reports, Vol. 8, page 675), while the Lieutenant-Governor understands that the courts look on persons who have not got possession for *bona fide* purposes of cultivation in the light of tenure-holders (9, Calcutta Law Reports, page 449). It seems therefore to Mr. Rivers Thompson that a definition on the lines he proposes would not only be in accordance with the prevailing judicial opinions on the subject, but would also establish an intelligible demarcation line between the cultivator and the mere rent-receiver, which would hold good in the great majority of, if not in all, cases. Such a definition would also have the great advantage of classing as tenure-holders mahajans and other non-agricultural purchasers of occupancy rights, whose ryots would then become 'ordinary' ryots, saved by the provisions of the Bill applicable to their class from the worst evils of rack-renting, and capable of acquiring occupancy rights in course of time.

In making this suggestion, the Lieutenant-Governor is not unmindful of the objection that it would tend to increase indefinitely the chain of middle men between the proprietor and the actual cultivator. The increase, however, would be but nominal; for the non-cultivating occupancy ryot is already in fact a middleman, while middlemen, divorced from all connection with tillage, are rarely in these provinces, owing to the pressure of population on the soil, recruited from the cultivating classes. Besides, even if middlemen are created, the condition of the actual cultivator under them would be better (if the proposals which the Lieutenant-Governor will subsequently make be accepted), than under rack-renting occupancy ryots, who are middlemen in all but the name. Mr. Rivers Thompson is also not forgetful of the probability that such a definition as he proposes would meet with some opposition in portions of deltaic Bengal; for instance, where certain classes claim the *status* and immunities of tenure-holders, while exercising over under-tenants the power and privileges at present enjoyed by occupancy ryots. These classes would oppose a formal definition which would curtail the power they claim to exercise; and it is only right to say that their opposition seemed so formidable to Sir Richard Temple that, notwithstanding the existence of judicial decisions declaring these classes to be tenure-holders, he deemed it imprudent to provoke it by affording any protection, even in settlement proceedings, to the actual cultivators of the soil. On the other hand, the proposed definition would meet with approval, and would redress existing inconveniences in those districts where cultivation expands or contracts with the rise or fall of prices, an elastic rent system being the consequence.

Such being the objects to be provided for, the question is, what form should the definitions take? This question is, no doubt, difficult, the difficulty being in connection with the point whether an occupancy ryot may sublet his holding and still remain a ryot. In by far the greater portion of these provinces it is, in the Lieutenant-Governor's opinion, safe to provide that a ryot who sublets a large portion of, if not his entire holding, thus divorcing himself from actual cultivation, shall be deemed to be, not a ryot, but a tenure-holder. In the less settled portions of the deltaic and frontier districts, however, subletting is the usual procedure for reclaiming land, and is rather a method of *ryotti* cultivation than an evidence of sub-infeudation. In such districts, therefore, subletting of the entire holding should not operate to convert the lessor into a tenure-holder, but should be deemed consistent with the *status* of a ryot. Bearing these considerations in view, the Lieutenant-Governor submits for the consideration of the Council the following definitions which are based on those contained in the Rent Commission's Report:—

(a)—A tenure means (1) a rent-paying interest in land subordinate to the interest of a proprietor and superior to that of a ryot; (2) a rent-free interest in land when a rent-paying interest in the same land exists between the proprietary interest and such rent-free interest; (3) a revenue-free or rent-free interest in land when no rent-paying interest exists between such revenue free and rent-free interest and the proprietary interest. A tenure includes an undertenure.

*Illustrations.*—A *patni*, *dar-patni*, or *se-patni* interest is a tenure. An *ijara* or *dar-ijara* is a tenure. An occupancy holding, which the owner does not cultivate as ryot, is a tenure. A valid *bramhotur* is a tenure. A *lakhiraj* holding, included in a revenue-paying estate and not entered in the register of Revenue-free lands, is a tenure.

(b)—A ryot or tenant means a person who cultivates land, or who occupies land for the purposes of cultivating it, or bringing it under cultivation. A person cultivates land or brings it under cultivation within the meaning of this definition, when cultivation is carried on by himself, or by the members of his family, or by his servants, or by hired labour, or by subletting a part while continuing to carry on cultivation by one or more of the preceding means in a moiety of the land.

Provided that by order duly published in the *Calcutta Gazette*, the Local Government may declare that cultivation as a ryot may be carried on within a tract to be specified in such notification by subletting the whole of the land, and may suspend or withdraw that order, and such declaration shall have the force of law.

*Illustration.*—Cultivation of the whole or part of an occupancy holding on the terms of a division of produce between the occupancy holder and the actual cultivator, is cultivation under a sub-lease.

(The latter illustration is meant to provide for those cases which, judging from experience, would probably be numerous, in which mahajans having bought up occupancy rights would let a portion of the land on a *nukdi*, and the remainder really on a *baoli* tenure, but ostensibly on a contract fixing portion of the produce as the wages of labour.)

I am to propose below that landlords be allowed a more summary procedure for collecting rents from tenure-holders than from ryots, while non-occupancy ryots renting land from tenure-holders be granted a more beneficial *status* than *kurfas* or under-tenants can enjoy. It is to be hoped that by these means the interests of the landlords on the one hand, and those of the actual cultivators on the other, will jointly operate in the direction of classifying as tenure-holders all owners of occupancy rights who do not actually cultivate the soil; and further that the limitations imposed on the powers of tenure-holders to rack-rent, to which reference will be made later on, will discourage the growth of the class.

## CHAPTER II.

8. The provisions relating to the distinction between *khamar* and *ryotti* lands have been subjected to a good deal of criticism, the outcome of which is to confirm the Lieutenant-Governor's belief in the usefulness of those provisions, especially in Behar. It may be conceded that the chapter is not so much required in Bengal as in Behar, and that there is truth in what some critics of the measure say, that if in Behar landlords strive to absorb *ryotti* lands into *khamar*, in Bengal ryots strive to convert *khamar* into *ryotti*. In either case, however, it would seem that some provisions, such as the Bill contains, are necessary; although the Lieutenant-Governor is not prepared to say that, if enacted, they will be found as necessary, or made as much use of, in Bengal Proper as in Behar. The requirements of particular districts will, however, be sufficiently met by the discretion with which section 7 of the Bill vests the Local Government. Undoubtedly the chapter may be needed from time to time in particular tracts in Bengal, where it would prove an useful adjunct to some other provisions of the Bill; but it would probably be unnecessary to enforce it on any large scale in Bengal Proper, if landlords do not abuse their power of pre-emption by converting *ryotti* into *khamar* land. This point will be dealt with later on.

Some critics of the Bill, while admitting the necessity for the chapter, especially as regards Behar, desire to modify it so far as not to absolutely limit for ever the stock of *khamar* land. Some would allow it to be increased by the absorption of *ryotti* land; others by the re-

Distinction between *ryotti* and *khamar* land.

Proposals to recognize an increase in *khamar* land examined.



clamation of waste lands and by alluvial accretions; and a few, referring to local peculiarities of tenure, would class as *khamar* such lands as the *utbundi* lands of Nuddea. On the general principle whether *ryotti* land should be absorbed into *khamar*, the Lieutenant-Governor entertains a decided opinion in the negative. Without wishing to reduce the existing stock of the landlord's *khamar* or *zeraat* land (in which it should be distinctly understood that the lands for instance, known as indigo *zeraats*, which are essentially *ryotti*, are not included), Mr. Rivers Thompson believes that every consideration of law of experience, and of expediency, is against its extension. It has been affirmed that *khamar* was originally the waste unreclaimed area of the village which the zemindar was permitted to cultivate by contract for his own advantage during the term of his revenue engagement with the Government of the day, but which, as cultivators settled on it, became part of the *ryotti* land of the village. However this may be, the fact is indisputable that under the Permanent Settlement Regulation (VIII of 1793, sections 37 to 39) no land was recognized as *khamar* which was not such on the 12th August 1765, the date of the grant of the Dewani, and there is no law recognizing the creation of *khamar* land subsequent to that date. These facts afford a sufficient answer to the charge of an infringement of ancient rights, which is brought against the present proposals to define the limits of *khamar* land; and it may be added that from the facts established in other countries, of the clear line of distinction between demesne and tenemental lands, analogies\* might be drawn in favour of those provisions of the Bill.

If, however, it be inexpedient to permit the increase of the *khamar* area by the absorption of *ryotti* land, can the same be said of an increase through reclamation of waste lands, alluvial accretions, or lands subject to special conditions of cultivation. In the Lieutenant-Governor's opinion, the prohibition should hold good here too. In those districts where large waste areas still exist, and where there is no customary right of pasturage or easement involved, the faculty of converting waste into *khamar* might perhaps be conceded without any immediate loss to the community at large; though, looking to the over-growing importance of emigration from the more crowded tracts to those wastes, there would be ultimate loss and difficulty. In those districts, however, where the village wastes are the only pasture grounds, the case assumes a different aspect, for admittedly one of the most crying wants in these provinces is the provision of sufficient pasturage for cattle. While our Forest Department is unsuccessfully struggling with the difficulty of providing fuel and pasturage reserves that manure now used as fuel may be liberated for agricultural uses, and cattle preserved for husbandry, it would surely be unwise to hasten the absorption into the cultivated area of such limited pasturages as still remain by any such incentives as the proposals in question are calculated to afford.

It is stated by some that local custom usually classes *churs* as *khamar*, and that such a custom ought to be recognized; but the Lieutenant-Governor must say that he does not see on what basis of right such a custom, which is opposed to positive law, could be defended. The principle guaranteed by section 4, Regulation XI of 1825, that a ryot or "any description of under-tenant whatever" has a right to an accretion to his holding, would, if properly pleaded, dispose, in the Lieutenant-Governor's opinion, of many such "customs" in a court of justice. It is well known that *churs* and alluvial accretions form large tracts of country, especially in the deltaic districts. Many of these *churs* are inhabited by an industrious class of resident ryots; and any custom, even if legal, which would deprive them of agrarian rights, would be indefensible on grounds of public policy or justice to individuals, and a fertile source of embarrassment to Government.

Finally, in regard to *utbundi* lands, the Lieutenant-Governor does not see that any exception to the general rule is needed. As far as he is aware, the *utbundi* tenure is only special as regards the system on which the rent is paid, and does not affect the legal attributes of the land. It is not so much that one ryot cultivates one *utbundi* holding one year, and a different ryot another year, as that rent is paid only on the extent of land actually cultivated for the year, and by measurement at harvest time according to the actual outturn of the crop. The Lieutenant-Governor understands that prescriptive rights of occupancy under Act VIII of 1869 are now actually acquired in these *utbundi* lands, and he would not by any provision impede the growth of such rights.

### CHAPTER III.

9. The Lieutenant-Governor is disposed to agree with those who object to classing tenants

Objection to classing ryots holding at fixed rates as necessarily tenure-holders. Registration of tenures.

at fixed rates as necessarily tenure-holders. He would prefer to apply to them the definition already given classing them as tenure-holders or ryots as they fall within the definition of either.

Mr. Rivers Thompson also agrees with the representative Associations in thinking it undesirable to retain section 28 of the Bill. Tenure-holders are, as a rule, well able to look after their own interests, and they have, in section 32 of the Bill, a means provided of compelling registration should they prefer not to await the landlord's action under section 33. It is unlikely that a tenure-holder desiring to register a transfer would be deterred from applying to the landlord under section 27 by any of the causes which may deter a ryot from tendering payment of rent. The introduction of the revenue officer, therefore, in these proceedings is unnecessary; and as the double procedure would be embarrassing, the section may well be omitted, and the same facilities to compel registration afforded to both the tenure-holder and his landlord. Parties should go to the court where they will get final relief, unless there be a distinct advantage to be gained by a departure from this rule. The omission of section 28 from the Bill would involve modification in section 35. The words from "and determine" to "under section 27" might be omitted, and "Local Government" substituted for "Board of Revenue" in the first line.



## CHAPTER IV.

10. The Lieutenant-Governor approves of the principle of including the law for the sale of patni taluks in the Bill, as it is essentially a part of the law of landlord and tenant in these provinces, and as its provisions may be advantageously extended to some other classes of tenures besides those distinctively known as *patnis*. He sees no force in the objections made to this course; for there is no question of altering the substantive provisions of Regulation VIII of 1819, or of modifying it in any points of principle, or except on a few, and those unimportant, points of detail. If, however, the Regulation be now included in the Bill, it is for consideration whether the whole law should not be worked into the body of the Bill, instead of being relegated in part to a schedule. This would bring into one code the whole law upon the point relating to landlords and tenants.

## CHAPTER V.

11. This chapter brings into prominence one of the chief features of the Bill, and has naturally received much attention. The advocates of the zemindari interest object to any expansion of the provisions of Act X of 1859; but, putting extreme partizans on one side, the Lieutenant-Governor does not see that any reasonable objection is made to conferring on ryots, who have resided twelve years in the village, rights of occupancy in all lands they hold, or may hold, in that village. Considerable opposition, however, is shown to the introduction of the term "estate" into the definition, and various examples are given of the hardships which would be thereby inflicted on zemindars or tenure-holders. The basis of all the hostile criticisms on the chapter is that the "settled" ryot is not the true representative of the *khudkhast* ryot, and that, as the object of this legislation is supposed to be the rehabilitation of the *khudkhast* ryot, we go beyond the requirements of the case by introducing the "estate" into the definition, and excluding the idea of *residence* as essential to the *status* of the ryot in question. That is, in the Lieutenant-Governor's opinion, a correct representation of the main objections to the definition, though in his own view it is untenable, having regard to what passed in 1859. It must be added, however, that, in a petition to the House of Commons, the Behar Landholders' Association go the length of asserting that the *khudkhast* ryot was altogether unknown to Behar at the time of the permanent settlement, which they say only recognised, on the one hand, proprietors of the soil, and, on the other, tenants-at-will with no rights or privileges of any description. This extraordinary assertion of the extreme zemindari view of the permanent settlement has for its sole foundation the facts that the rule regarding the cancellation of *khudkhast* ryots' pottahs contained in the second clause of section 60, Regulation VIII of 1793, did not apply to Behar, and that the Court of Directors in 1819 expressed an opinion that zemindars were entitled to eject *hereditary* ryots on refusal to pay even exorbitant rents.

It would be tedious to enter here on an examination of the permanent settlement with a view to correct the serious misapprehensions of its nature and effect into which the Behar Landholders' Association have fallen. Such an examination will be found on pages 97 to 108 of the Papers on the Working and Amendment of Act X of 1859, which have recently been republished by the Government of India; and here it will be sufficient to say that the position of Behar zemindars at the time of the permanent settlement, so far from being the independent one now claimed by the Behar Landholders' Association, was such as to justify Mr. Shore in speaking of "the very degraded state of the proprietors in Behar compared with those in Bengal. The former, unnoticed by Government and left at the mercy of the *amils*, have in fact considered themselves proprietors only of tithe of their real estates, and assured of this when dispossessed, they have been less anxious to retain a management, which exposed them to the chance of losing a part of what they received without it." And, again, "the system of management adopted in Behar for so many years having been calculated to destroy all ideas of right in the proprietors of the soil, beyond their admitted claims to a tithe of their proprietary right, they consider all besides this at the discretion of the Government." (Minute of September 18th, 1789). The true reason why section 60, clause 2, Regulation VIII of 1793, did not apply to Behar was that written pottahs had obtained a currency in Bengal which was unknown in Behar, where the *baoli* rent system and verbal agreements had prevailed up to the latter part of the last century; that accordingly provisions for dealing with collusive pottahs, which were of use in Bengal, would have been out of place in Behar, and that the same stringent rules required to protect ryots against the powerful landholders of Bengal were uncalled for in the case of the powerless zemindars of Behar. "In Behar," says Mr. Shore, "the variations in the demands upon the ryots are not so great as in Bengal; the system of dividing the produce (*i.e.*, the *baoli* system) affords a definite rule whenever that prevails; and the regulations need not be so minute as those proposed for Bengal." (See paragraph 145 of the Minute already quoted: also Harrington's Analysis, Vol. III, p. 441). If the Behar Landholders' Association had consulted the official literature on the subject, they would have been saved from the error of thinking that Behar ryots were held to have no rights by the framers of the permanent settlement. The whole of that literature proves beyond doubt that the ancient usages of the people were, at the time of the permanent settlement, less obscure in Behar than in Bengal; that the true position of zemindars as removable revenue collectors was less open to dispute; that the cultivator's right to hold his land as long as he paid the authorised rent was less questioned; and that even the *paikhast* ryot was less known, the village margin of waste land being greater in Behar than in Bengal.

If the Behar Landholders Association's appeal to section 60, Regulation VIII of 1793, be unfortunate, their reference to the Court of Directors' Despatch of 1819 is not less so.

far from stating that in 1793 zemindars had unlimited powers of ejection and enhancement over all classes of ryots, as the Association assert, that Despatch is concerned with proving exactly the reverse, as is shown by the following passage from the 13th paragraph opening the discussion of "the Rights of the Peasantry":—"Although the zemindars with whom the permanent settlement was made are, in the regulations respecting that arrangement, declared to be 'actual proprietors of the soil'; although their zemindaris are called landed estates, and all other holders of land denominated their under-tenants; and although, as we shall have occasion more particularly to observe in the course of this Despatch, the use of those terms, which has ever since continued current, has in practice contributed with other causes to perplex the subject of landed tenures, and thereby to impair, and thereby to destroy, the right of individuals, yet it is clear that the rights which were actually conferred on the zemindars, or which were actually recognised to exist in that class by the enactments of the permanent settlement, were not intended to trench upon *the rights which were possessed by the ryots*" (the italics are the Lieutenant-Governor's). The whole tenor of the Despatch goes to show that undoubtedly the peasantry in 1793 had rights which neither the Government of the day did, nor could, alienate from them; and the passage which the Association quote, apart from its context, merely states as an "unavoidable inference" that zemindars "are authorized by the existing law (*i.e.*, by the law as understood in 1819) to oust hereditary ryots." Keeping in view the unforeseen effect on tenant right of the legislation subsequent to 1793, particularly of Regulations V of 1794 and VII of 1799, it will be seen that the Court of Directors in the passage quoted by the Association were in fact not referring to the permanent settlement at all, or to ryots' rights under it. And of this (if further demonstration on the point is to be given) the Behar Landholders' Association might have satisfied themselves by going a little beyond the quotation they make from the conclusion of the 53rd paragraph of the Despatch, to the commencement of the 54th. The 54th paragraph of the Despatch of 15th January 1819 runs thus:—"In the consideration of this subject it is impossible for us not to remark that consequences, the most injurious to the rights and interests of individuals, have arisen from describing those with whom the permanent settlement was concluded as actual proprietors of the land. This mistake, for such it is now admitted to have been, and the habit which has grown out of it in considering the payment of the ryots as rent, instead of revenue, have produced all the evils that might be expected to flow from them. They have introduced much confusion into the whole subject of landed tenures, and have given a specious colour to the pretensions of the zemindars, in acting towards persons of the other classes as if they, the zemindars, really were, in the ordinary sense of the words, the proprietors of the land, and as if the ryots had no permanent interests, but what they derive from them \* \* \* \* \*

It is fortunate, however, and must not be forgotten that in the same Regulation in which the Bengal Government in 1793 conferred rights upon the zemindars, apparently inconsistent with the rights of the cultivators of the soil, it reserved to itself the full power of passing such laws, as from time to time might appear necessary for the protection of the rights acknowledged to be vested in the ryots."

It did not of course require this demonstration to satisfy the Government of India that the views expressed by the Behar Landholders' Association, on the status of zemindar and ryot in Behar in 1793, are incorrect; but the Lieutenant-Governor has thought it right that the expression of such erroneous views, by an influential body of land-owners in a petition to Parliament, should not be allowed to pass uncontradicted.

Returning to the objections which have been raised to the definition of a "settled ryot," the Lieutenant-Governor starts with the fullest acceptance of the principle enunciated by the Famine Commission, that it is "desirable for all parties that measures should be framed to secure the consolidation of occupancy rights, the enlargement of the numbers of those who hold under secure tenures, and the widening the limits of that security." This principle finds a fitting recognition in the constitutional acknowledgment made by the Bill that the proprietor's interest in the soil is not an absolute or exclusive one; but that, as Lord Hastings' Government admitted in their letter of the 7th October 1815, to the Court of Directors, the permanent cultivator has an "established hereditary right in the land he cultivates so long as he continues to pay the rent justly demandable from him with punctuality." This position has the Lieutenant-Governor's fullest approval as being in accordance with the ancient custom of the country, and never superseded by any act of active legislation. The customary law of these provinces being such, the question remains whether the village in which the cultivator lives should limit and bound his rights, or whether, having once been admitted by the landlord to permanent cultivation in one part of his estate, he should not be deemed entitled to similar privileges in other portions which lie outside the village in which he may actually reside. To the question thus raised, the Lieutenant-Governor would give an affirmative answer. The interests of the community require as large an extension of fixity of tenure as is consistent with the rights of the zemindars, and the only rights which can be conceded to zemindars upon the point are those of receiving fair rents, and of assuring themselves that the persons they admit to permanent residence and cultivation within their estates are persons of good character and likely to make solvent, industrious tenants. Once assured on these points, the proprietor of an estate can have no reasonable justification for refusing to an approved tenant cultivating rights in one portion of his zemindari which he has granted to him in another. It must be remembered that the proposal under consideration has been brought forward in consequence of the evils caused by the action of the zemindars themselves in shifting their ryots from land to land to prevent the accrual of a right which the earliest Regulations recognised, and Act X of 1859 distinctly affirmed.

On this question the Lieutenant-Governor would say that perhaps too much importance has been attached to the fact that the term *khudkhasi* connotes, or is believed to have connoted, the idea of residence in the village in which the ryot's holding lay. The early discus-

The definition of a 'settled' ryot as contained in the Bill further justified.



sions upon Act X of 1859 show that residence, though generally, was not always a condition of occupancy; and at any rate it should be borne in mind that we are not now seeking to rehabilitate the *khudkhasi* ryot in exactly the same status which obtained in 1793. The reasons for this are obvious. The period between 1793 and 1859 was one in which the power of the landlord had grown beyond controllable limits, and exercised an almost paramount influence dangerous to public stability and order. It was in such a state of things that the law of 1859 was passed; and as regards the position of the main body of the cultivating classes, the doubts and difficulties of the situation (which had arisen from the effacement of the ryots' rights and privileges by unchecked zemindari influence and independence) were solved by the declaration of a 12 years' occupancy as evidence of prescriptive title, that term being adopted in the Act absolutely and *without reference to residence*.

Even if Act X of 1859 had not thus introduced a "new departure" in the land law of Bengal, the changes of a century, and the indeterminate limits of villages at the time of the permanent settlement, forbid that we should go back now to the consideration of a state of things which existed nearly a century ago. It is, in fact, impossible to do so, for the circumstances and conditions of the country are different; and all we can hope to do is to place the settled ryot of to-day in a position analogous to that occupied by his prototype. One of the privileges of the *khudkhasi* ryot was to hold fresh land in the same village on the same tenure as the old; and as, in those times, there was a large margin of waste in all villages, the resident cultivator had the fresh land at his door. There is now but little margin of waste in any village of the settled districts, and therefore the ryot, if he wants to add to his holding, cannot always succeed in doing so. That he should, however, if successful in his quest (and he can only succeed with the consent of his landlord), hold such additional land in the same estate, by the same title as his original holding, is only a rational development of an old customary law of the country to suit modern wants.

In considering all that has been urged against the definition which the Bill gives of a settled ryot, Mr. Rivers Thompson regrets to find but little evidence of a conciliatory spirit on the part of zemindars. They represent, in all their statements upon the question at issue, that they, of all people, are the most anxious to retain good ryots upon their properties; but when an attempt is made to translate their expressions of good-will towards their tenantry into positive law, in accordance with the necessities of the case as demonstrated by accumulated proof, the landlords assert their right not to be bound by any law. This question of definition of a settled ryot is a case in point. It is impossible to believe that in early times, as population grew and the margin of waste land in a village diminished, a landlord's approved tenants would not have the preference of such fresh lands as existed in neighbouring villages of the estate, or that they would hold such lands on a less secure title than attached to their lands in the parent village. It must also be remembered that, owing to the disintegrating influence of time and of the law of inheritance, the village area of to-day is frequently much smaller than the village area of a century ago; and to restrict the rights of the settled ryot to the smaller area would not be just to him nor advantageous to the public, nor in accordance with the practice which has grown up under Act X of 1859. All experience shows that the settled ryot of a village, who rarely holds more than a few acres of land, and who is therefore too poor to afford two homesteads, or any care-taker but himself and children, can never go far from his home for fresh land. This can be asserted with positive certainty of all those ryots who pay less than Rs. 20 annual rent, and they number 8,925,000 out of the 9,752,000 ryots, who, according to the Famine Commissioners, cultivate the soil of Bengal. It may be asserted, if not as positively, still with much probability, of 682,000 ryots who pay rents from Rs. 20 to Rs. 50. The residuum of ryots who may thus hold land in two villages is small; and it is not to the public benefit to discourage this substantial class of ryot; while even if a ryot of that class went 20 miles away from his village for fresh land, as some zemindars fear, he will still be well known to his landlord, who, after all, may refuse him the land. The Lieutenant-Governor must then support the definition of a settled ryot given by the Bill.

While, however, the Lieutenant-Governor thus agrees with one part of the definition of a settled ryot, he desires to represent an objection to section 45 as it stands, in that it throws on the ryot the burden of proving 12 years' occupation. This provision will in most cases cause delay and inconvenience, and in some cases must result in injustice. It is here a misfortune that Bengal is so absolutely destitute of a record of rights. If we had such a record the position would be without difficulties but in its absence there is much reason to fear continuous litigation to establish or disprove claims to a right of occupancy. When under the provisions of this Bill a record of rights is established, disputes will be impossible. But in the long interval before that can be accomplished, we must seek by some addition to the section to meet the difficulty, and the only way which presents itself to the Lieutenant-Governor's mind is the adoption of the principle that the fact of residence or actual occupation, which can be readily ascertained, should afford a rebuttable presumption that the ryot is entitled to be classed as a settled ryot. If the presumption be unfounded, the zemindar can readily rebut it, for all the materials of proofs are in his office or *sherista*. No one can doubt that in the vast majority of cases the presumption will not be rebuttable, and that the zemindars will not question it; and thus an enquiry into exceptional cases will alone be needed to secure to the country at large the peace and contentment which must attend on the well-defined status of the bulk of the agricultural population. On the other hand, an enquiry into the status of all resident cultivators will last a generation, and will lead to unrest, if not litigation, which should be avoided.

Finally, the Lieutenant-Governor has no doubt whatever as to the necessity of that provision which disables the ryot from contracting himself out of the law. On this point there is a general agreement of opinion that, in view of the power of the zemindar and the ignorance and weak-

Definition of a settled ryot further considered.

Objections to throwing on resident ryots onus of proving the 'settled' status.

Necessity for barring freedom of contract.



ness of the ryot, such contract should be disallowed. It must not be forgotten that the provisions on this subject contained in the Bill are in harmony with the principles of the Permanent Settlement Regulation (VIII, 1793), which, in sections 57 and 58, subjected to the Collector's supervision and approval not only the *forms* of leases, but also the *rates* of rent recoverable under them.

12. With regard to section 48, the Government of India will perceive from the local reports that some officers oppose the retention of the section in the Bill, because, for instance, it might be made the means of depreciating the value of an estate sold for arrears of revenue. To this view by itself, the Lieutenant-Governor does not attach much importance, because the establishment of a substantial peasant proprietary should enhance, and not depreciate, the value of an estate. There are risks, however, connected with the concession of such a power, inasmuch as it might be used as a means of bargaining by zemindars with parties whom they wished to favour on receipt of valuable consideration, and of defeating the accrual of the right of occupancy of the rightful cultivator who may have been in possession for 10 or 11 years. Mr. Rivers Thompson agrees with the Hon'ble Mr. Reynolds in thinking that the occupancy right, being inherent in the *status* of the ryot, is not the landlord's to grant; and, further, that no necessity has been made out for introducing into the Bill a principle which is foreign to the law of Bengal.

13. The objections to section 49 are numerous, and the Lieutenant-Governor is disposed on the whole to admit their validity, the more so as he is in favour of preventing the absorption of *ryotti* into *khamar* land. In the course of time, when *khamar* lands have been surveyed and registered, there will be no difficulty in maintaining the distinction between the two classes of land; and, in the Lieutenant-Governor's view, it would be advantageous to encourage the retention in the possession of zemindars of such demesne lands as they now hold. Under the existing law as interpreted by the courts, the Lieutenant-Governor understands that, if not barred by the landlord, rights of occupancy may be acquired in *khamar*, and he would not interfere with this state of things. With this view Mr. Rivers Thompson would suggest the addition of the words "or from year to year" after the words "fixed period" in the sixth line.

14. Coming now to section 50, I am to say that, while no serious objections have been made to clauses *a*, *b*, *c*, *d*, and *g*, there is great and radical divergence of opinion in regard to clauses *e* and *f*. One party predicts the worst evils from the recognition of free sale and the liberty to sublet; the other says that freedom of sale is necessary to the ryot's prosperity, while freedom to sublet cannot be prevented. No attempt is made to reconcile conflicting interests; and even the British Indian Association, the leading exponent of zemindari views, forget the admission deliberately made in their letter of 20th November 1878, that with proper safeguards they had "no objection to the proposal that the transferability of the occupancy tenure, restricted to the cultivating class, should be recognized by law."

There can be no doubt that the questions of free sale and subletting are intricate and difficult, and that the welfare of the ryots in these provinces is greatly dependent on a true solution of them. The key, however, to such solution is, in the Lieutenant-Governor's opinion, given by the Famine Commission when they say: "Though, on the whole, we regard the general concession of the power of sale of these rights to be expedient, and ultimately almost avoidable, the immediate course to be followed by the Government must, no doubt, be to a great extent governed by local custom. Where the custom has grown up, and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognized by the law; but where it has not, it may be questioned whether the law should move in advance of the feelings and wishes of the people." The question, then, which the Lieutenant-Governor has to answer is this: Has the custom of free sale of occupancy rights attained such a growth and stability throughout these provinces that it may now be safely recognized by law?

Having given the matter his most careful attention, the Lieutenant-Governor believes that the weight of argument and fact is in favour of legislation in the direction indicated by the Bill; and he accordingly would recognize the transferability of the ryot's occupancy right throughout these provinces. It may be accepted that freedom of transfer was not an incident of the *khudkhasi* ryot's holding; and the Lieutenant-Governor is not unmindful of the fact that in Jhansi, in the Deccan, to some extent in the Sonthal Pergunnahs, and possibly in other parts of India, free sale has had evil results on a thriftless peasantry. If he had to deal with the question as one of mere theory, Mr. Rivers Thompson would probably not remain uninfluenced by its historical aspect, and by the dangers of vesting a population with transferable rights of property before habits of thrift among them had been fully confirmed. But the Lieutenant-Governor has here to deal with a question, not of theory, but of actual practice. It is here not a matter of "introducing a source of temporary prosperity," and encouraging an "increase of thriftlessness on the one hand, and of greed on the other," as was the case in the Deccan, but of confirming and recognizing a growing custom, to which the needs of the country have spontaneously given birth, and which has so far produced no evil results.

It is true, indeed, that the Behar Landholders' Association, in the petition to Parliament which has been already noticed, assert that "in Behar there is no such custom (as sale of occupancy rights), nor is it even pretended that there is such a custom." That assertion, however, is certainly incorrect. It may, indeed, be said that if one point had been during these discussions more strongly insisted upon than another by Behar officers, it was this—that the transferability of occupancy rights was a growing custom in Behar, of which every man in the province, who

knew anything of agrarian matters, was well aware. On page 370, Vol. II of the Rent Commission's Report, statistics are given showing that 410 occupancy rights, *exclusive* of 445 *guzastu* tenures, were sold in Behar courts, *in execution of decrees*, during the single year 1878-79. That fact alone, which should have been within the knowledge of the Association, sufficiently refutes the assertion made in the petition to Parliament; but in order still further to demonstrate its inaccuracy, as well as to furnish the basis for future argument in the course of this letter, the Lieutenant-Governor will quote the following statistics of private sales of occupancy rights from the Appendix to the published Report on the Registration Department in Bengal for 1881-82, which is the latest authoritative information available on the subject:—

*Statement showing the number and value of Ryotti holdings transferred by registered deeds of sale in each Registration District of the Lower Provinces of the Bengal Presidency for the year 1881-82.*

DISTRICTS.	RYOTTI HOLDINGS AT FIXED RATES.									RYOTTI HOLDINGS WITH RIGHT OF OCCUPANCY								
	Number of transactions.	PURCHASERS.					Annual rent payable to landlord.	Purchase-money.	Number of years' purchase.	Number of transactions.	PURCHASERS.					Annual rent payable to landlord.	Purchase-money.	Number of years' purchase.
		Mahajans, traders, or money-lenders.	Zemindars.	Landlord of the holding transferred.	Zemindar or landlord of holding other than that transferred.	Ryots.					Mahajans, traders, or money-lenders.	Zemindars.	Landlord of the holding transferred.	Zemindar or landlord of holding other than that transferred.	Ryots.			
1	1a	2	3	4	5	6	7	8	9	1a	2	3	4	5	6	7	8	9
<i>Bengal.</i>							Rs. A. P.	Rs.								Rs. A. P.	Rs.	
Burdwan	1,107	182	35	67	350	439	10,188 5 0	1,06,333	10.4	2,361	329	22	43	1,432	512	17,250 1 0	1,06,422	9.6
Bankura	1,348	417	17	53	605	287	10,755 9 4	1,27,316	11.8	867	240	7	25	453	162	6,384 13 6	53,999	8.4
Boerhoom	300	28	5	14	209	80	2,400 0 0	30,703	12.7	1,067	111	18	61	1,340	354	13,581 0 0	95,355	6.0
Midnapore	1,207	530	13	30	467	262	8,655 10 1	94,806	10.9	4,514	1,692	72	51	1,961	698	22,937 6 10	2,80,329	11.7
Hooghly	445	85	12	13	178	165	4,070 3 0	31,017	7.8	1,280	308	17	52	775	514	10,420 0 4	1,23,010	8.3
Howrah	850	238	10	49	142	411	10,610 0 0	3,03,313	28.5	330	68	3	12	140	105	5,217 0 0	28,259	5.4
24-Pergunnahs	1,657	230	29	100	804	1,094	37,151 10 10	2,44,938	6.6	797	93	28	40	421	321	14,866 10 9	2,23,613	15
Nuddea	804	236	19	63	335	243	14,700 7 8	84,460	5.7	553	170	10	17	105	152	7,672 0 6	40,204	5.2
Jessore	1,823	102	28	59	1,233	450	25,248 0 0	1,27,445	5	1,319	121	19	39	808	375	15,645 0 0	69,250	4.4
Moorshedabad	753	92	35	51	368	233	5,055 6 8	51,236	10.1	907	119	23	31	482	256	6,241 13 1	51,225	8.2
Dinapore	258	11	1	3	227	17	2,129 6 0	28,405	13.3	1,202	57	4	14	978	149	10,550 6 0	1,25,410	11.8
Rajshahye	69	16	2	7	22	24	979 7 1	11,063	11.3	147	32	3	4	69	49	2,115 8 0	10,679	5
Rangpore	330	17	96	9	199	11	3,721 13 7	34,179	9.1	2,285	77	80	123	2,027	84	25,435 9 9	1,75,825	6.9
Rogra	9	2	...	6	...	...	223 0 0	3,067	18.7	316	17	...	84	198	22	2,509 0 0	17,526	6.7
Pubna	207	50	1	27	79	54	1,771 0 0	18,259	10.3	304	47	7	47	214	60	2,132 0 0	21,311	9.9
Darjeeling	...	...	...	...	...	...	107 0 0	125	...	...	...	...	...	...	...	22 7 0	448	...
Jalpigoree	5	...	...	2	3	...	107 0 0	125	...	...	...	...	...	...	...	22 7 0	448	...
Dacca	130	23	2	20	48	38	640 6 10	22,472	35.1	1,242	79	27	61	9.1	186	4,408 4 7	70,420	15.9
Furzedpore	197	8	...	35	125	55	1,614 0 0	12,028	7.4	600	30	11	90	706	242	4,924 0 0	41,093	8.3
Rackergunge	1,004	161	11	100	1,000	696	38,523 4 10	1,30,159	8.5	121	11	10	35	53	41	1,658 0 0	8,361	...
Mymensingh	167	20	8	42	75	37	792 4 10	18,844	23.7	640	55	25	77	721	138	4,008 11 6	56,688	14.1
Tipperah	149	27	7	20	138	31	1,615 2 9	11,022	7.6	3,046	82	7	40	2,392	716	14,329 15 0	1,31,817	9.1
Chittagong	614	40	10	43	112	417	2,985 1 1	34,968	11.7	108	8	...	8	18	90	864 12 0	9,372	10.8
Noakholly	948	73	24	485	164	503	9,710 0 0	63,082	6.4	460	34	31	153	316	65	5,425 0 0	22,931	4.2
<i>Behar.</i>																		
Patna	89	3	8	42	36	2	1,369 4 3	16,835	12.2	82	1	11	19	41	12	705 4 7	14,264	17.9
Gya	19	4	0	2	7	2	176 1 6	2,687	15.2	79	6	13	8	42	10	100 2 0	6,787	5.8
Shahabad	639	41	60	80	509	36	7,061 6 2	3,08,388	43.6	10	6	...	3	...	...	267 15 6	2,470	9.6
Muzafferpore	23	1	25	2	6	1	175 12 3	3,741	21.3	401	81	32	137	217	25	3,916 8 8	60,635	17.7
Durbhunga	97	4	3	28	49	15	823 12 9	8,706	10.5	99	16	21	21	33	6	678 8 3	7,085	10.4
Saran	102	12	2	17	119	17	980 7 0	16,320	16.9	59	4	...	11	49	14	489 5 6	8,098	17.4
Chumpan	42	17	...	4	21	...	109 2 1	3,602	18.1	61	13	2	2	39	5	138 2 9	6,128	37.1
Monghyr	242	49	31	41	107	26	3,783 10 10	37,681	9.9	107	40	4	47	92	20	2,275 9 2	20,691	9
Bhagulpore	183	25	16	3	57	32	1,525 9 0	10,627	6.9	107	36	7	5	127	22	1,905 1 7	15,313	7.7
Purneah	3	2	...	1	...	...	185 2 0	394	2.1	890	138	4	16	733	55	7,628 14 4	69,327	9
Malda	68	34	...	2	7	23	1,895 7 4	8,877	5.2	1,288	72	1	3	1,204	8	2,359 8 4	85,104	36
Southal Pergunnahs	371	103	12	6	254	...	2,732 0 0	24,168	8.8	2,982	986	16	35	1,837	131	21,516 0 0	1,56,380	7.2
<i>Orissa.</i>																		
Cuttack	97	18	6	14	10	39	456 3 7	9,029	19.8	7	1	1	1	1	3	9 14 1	283	23.8
Pooree	232	27	...	61	97	55	788 15 10	14,801	10.2	467	108	...	49	248	100	1,441 6 1	37,922	26.3
Balasore	53	17	...	4	19	15	229 9 8	2,733	11.9	26	6	1	3	16	4	47 7 0	747	15.8
<i>Chota Nagpore.</i>																		
Hazaribagh	7	6	...	...	3	...	1,300 11 6	3,924	3	11	9	...	...	5	1	850 10 9	2,489	7.1
Lohardugga	9	3	2	...	5	1	158 4 0	1,800	11.3	21	10	2	2	7	1	54 12 0	3,718	67.9
Singhbhoom	...	...	...	...	...	...	...	...	...	3	...	...	1	...	2	14 10 0	144	10.8
Maubhoom	92	14	...	2	66	17	508 0 0	11,657	22.0	216	9	7	2	164	41	1,535 12 0	13,089	8.5
GRAND TOTAL	17,833	2,957	550	1,710	8,380	6,740	2,17,739 10 7	20,82,000	9.5	32,633	5,361	558	1,472	21,203	5,539	2,53,289 12 5	23,30,168	9.3

These statistics prove that not only in every district of Behar, but in every district of these provinces (except Darjeeling, where altogether exceptional conditions prevail) occupancy rights are now more or less freely sold as a matter of private agreement without objection on the landlord's part, and we know from independent evidence that many of the districts in which the custom seems most firmly established are those in which ryots are best off. It is true that about 16 per cent. of the purchasers of occupancy rights are mahajans; and this is a fact which has created misgivings as to the ultimate effect of formally recognizing the transferable character of occupancy rights. That is a danger, however, for which it is believed some provision has been made in the earlier portions of this letter, and with which I am to deal at greater length further on. Here I am to observe that it is now quite too late for landlords to object to a custom which already seems, without any opposition on their part, to have taken root in the agrarian economy of the Province.

Although, however, landlords may be out of court in their objections to the recognition of the freedom of sale of occupancy rights, this question remains—Is it desirable to give to the custom generally the formal sanction of the law, and if not generally, then to what extent? The Lieutenant-Governor has no doubt whatever that the law may recognize free sale throughout Bengal, and if he had doubts on the question as it affects Behar, those doubts would have been removed by the unanimity of impartial local opinion in favour of the proposal, and by the evidence afforded not only by the Registration statistics referred to above, but by the following figured statement of the extent to which occupancy rights in Behar were sold during the last three years in execution of decrees in the various Civil Courts:—

*Sales of occupancy holdings in the districts of the Patna Division, in execution of decrees, during the years 1881, 1882, and 1883.*

District.	1880.		1881.		1882.	
	Number of holdings	Selling price.	Number of holdings	Selling price.	Number of holdings	Selling price.
		Rs.		Rs.		Rs.
Patna . . . . .	72	9,627	71	7,667	97	14,456
Gya . . . . .	92	8,076	32	1,209	57	4,875
Shahabad . . . . .	696*	11,988	924*	23,933	1,174*	10,722
Sarun . . . . .	247	3,610	291	3,150	160	13,565
Chumparun . . . . .	132	2,416	145	2,310	141	2,559
Durbhunga . . . . .	843	13,463	1,628	15,286	1,693	22,406
Mozufferpore . . . . .						
<b>TOTAL</b>	<b>2,082</b>	<b>49,180</b>	<b>3,091</b>	<b>53,555</b>	<b>3,622</b>	<b>68,583</b>

\* Including *Guzastar*

It may be added that in the Monghyr and Bhaugulpore districts, which, though not portion of the Patna Division, are usually considered portion of Behar, 91, 184, and 102 occupancy holdings were sold in each of the above years respectively.

It will thus be manifest that occupancy rights are now saleable in every district of Behar both as a matter of private agreement, and compulsorily in satisfaction of debts; but even had this not been so, it would have been difficult to justify, on one of the main principles of the Bill, any distinctive practice in two parts of the same Province. On a review of the whole question, then, the Lieutenant-Governor cannot but conclude that the balance of argument is in favour of extending to Behar the recognition of the right, which the circumstances of Bengal Proper not only justify, but demand. As observed by the British Indian Association in 1878, the recognition of the right of transfer would create a direct interest in the improvement of the soil, would stimulate cultivation, would tend to establish a substantial peasant proprietary, would give a valid security for the realization of the landlord's rent, and, by increasing the marketable value of the land, would lower the rate of interest when the ryot has to borrow. These are all advantages which cannot be lightly foregone; and Mr. Rivers Thompson therefore does not contest the wisdom of this portion of the Bill, the more so as its operation would be made the subject of watchful supervision.

While, however, the Lieutenant-Governor thinks that the right of free sale of occupancy rights may now be conceded as beneficial to all parties, and, indeed, not to be repressed, he is of the opinion that the wishes of zemindars may be so far consulted as that the notices of sale prescribed by section 51 should be presented, and successions under sections 54 and 55 of the Bill registered in their offices, and a ready means of information thereby afforded them of electing or not to exercise their right of pre-emption without the intervention of the Collector in the first instance. Section 46 of the Rent Commission's Bill provided for such registration, and Section 47 provided for the levy by the zemindar of a reasonable fee. Both these provisions commend themselves to the Lieutenant-Governor, and he would suggest that they be incorporated in the Bill before the Council. He believes it is only fair to allow zemindars to levy such a fee as will cover the costs of maintaining a registering establishment, while in matters of this kind it is of infinite advantage to encourage, as far as possible, arrangements out of court. They avoid the intervention of the ministerial officers in negotiations, thus reducing expenditure; preclude an irritating cause of harassing delays; and tend to promote more friendly relations between landlords and their tenants. It is not forgotten that doubts are expressed in paragraph 26 of the Statement of Objects and Reasons as to the possibility of bringing home to the ryot class generally the details of such a system; but there are reasons for believing that the class is conversant with this system already, and that its enforcement will be in accordance with custom. To provide for cases in which the ryot might not wish to approach the zemindar, or in which he might wish to secure proof of service of the notice, provision might be made for effecting service through the Sub-Registrar, either by the post or otherwise. The Lieutenant-Governor would prefer that such service should be effected through the Registration Department rather than through the Collector or civil courts, because that Department affords cheaper facilities to the people; and, as in the majority of cases it may be



expected there will be no dispute and no wish on the landlord's side to exercise his right of pre-emption, it seems as well that the office which will register the completed transaction should also deal with its initial stages. There is, as has been already suggested, a strong, and the Lieutenant-Governor must say reasonable, objection to unnecessary interference on the part of revenue or judicial officers in private transactions; but this objection does not hold in the case of the Registration Department, which, in all negotiations of the sort, is altogether passive. Of course the Collector will be kept informed by the Registrar of all that passes in his various rural or urban offices in connection with these provisions of the law.

But while advocating registration of sales in the zemindar's *sherista*, the Lieutenant-Governor does not desire to give the zemindar a *veto* upon the transaction. It has been suggested by the Commissioner of Dacca, concurring in the opinion of the Collector of Mymensing, that "the landlord ought not to be bound to register any one as his ryot who is not a *bona fide* cultivator;" and this proposal is in accordance with the recommendations made by the British Indian Association in their letter of 20th November 1878, to which allusion has already been made. The Lieutenant-Governor would be very glad indeed if he could see his way to adopting that suggestion, but it seems to him impracticable. The object, of course, is to prevent occupancy rights passing into the hands of mahajans; but the village mahajan is very often to some extent a *bona fide* cultivator of the soil, whom, on the testimony of the British Indian Association itself, it is not always desirable to exclude; while it may be fairly presumed that most landlords would waive their power of *veto* if it were made worth their while to do so. Hence a system of fines on transfers would grow up, which would have the two-fold effect of reconciling landlords to dealings with all sorts of mahajans who could best pay them, and of depreciating the value of the occupancy title to the ryot, to whose shoulders the purchasing mahajan would in time transfer the full weight of the fine. For these reasons, then, the Lieutenant-Governor must dissent from the view that a *veto* on sales should be allowed to proprietors, finding no justification for it in actual experience, believing that in the pre-emption sections of the Bill the zemindars have a safeguard against the evils they fear from the exercise of the right of free sale, and being convinced that a concession on this point to the wishes of the zemindars would entirely neutralize the principle of free sale.

Although the Lieutenant-Governor is thus desirous of affording zemindars all reasonable facilities of keeping themselves acquainted with changes in their estates without undue official interference, he is not satisfied that the registration provisions of the Bill are all that is called for by the circumstances of these provinces. If those provisions prove effectual for the purposes of the landlords they will go no way towards supplying the Executive with what it ought to possess—adequate information regarding the division and sub-infeudation of property, and the transfers it undergoes. In Act VII (B.C.) of 1876 we have such a source of information in regard to the interests of proprietors, managers, and mortgagees, and it remains to complete the chain by the addition of links which will supply similar knowledge regarding all sorts of tenures. In a later portion of this letter the Lieutenant-Governor will propose that the *patni* sale procedure, or some reasonable modification of it, be applied to the recovery of arrears of rent due by tenure-holders; but to render that proposal workable it is essential that tenures of all sorts should be registered. Thus, not only for the purposes of this Bill, but for wider administrative reasons, Mr. Rivers Thompson thinks that the time has come when the registration, which has been effected of proprietors' titles, should be brought lower down. This will be best done by following, with due modifications, the procedure of Act VII (B.C.) of 1876, which was worked so successfully in regard to proprietary titles; and therefore, when sufficient progress has been made with this Bill in Committee to indicate the direction in which legislation for the registration of tenures should proceed, the Lieutenant-Governor will be prepared to introduce into the Bengal Legislative Council a Bill for the purpose. For the registration of occupancy holdings, Mr. Rivers Thompson looks forward to the creation of a competent village agency, the result of a revision of the *Putwari* Regulations, and of a survey and record of rights which will relieve zemindars of the duty of registration, and transfer it to responsible public officers.

Before passing on from this subject of registration and pre-emption the Lieutenant-Governor desires to draw attention to the ambiguity which arises from the employment of the term "landlord" in those sections of the Bill. It is not, of course, the intention to give to the holder of a temporary interest, such as an *ijaradar*, the power of pre-emption: that privilege is reserved, as the Lieutenant-Governor understands, to the proprietor or permanent tenure-holder. But the definition of landlord in section 3 (g) of the Bill, and the employment of the term in sections 51, 54 and 55, is not calculated to promote that intention. Wherever the word "landlord" is used in these pre-emption clauses, the Lieutenant-Governor would suggest the substitution of "proprietor or permanent tenure-holder."

15. Having thus expressed his opinion in favour of the unrestricted freedom of sale of occupancy rights in Bengal and Behar, the Lieutenant-Governor proceeds to consider the question of subletting, and in regard to it he at once admits that subletting by occupancy ryots is calculated to cause difficulty and inconvenience. Mr. Rivers Thompson has, however, sought in vain through these papers for any criticisms on this question which are not merely destructive, or for any practical suggestions by which subletting may be prevented or the difficulties which it occasions obviated. From the discussions which have passed, however, one fact, which is, besides, in accordance

with the Lieutenant-Governor's previous ideas, comes out in strong relief, name'y, that subletting cannot be prevented either in Bengal or in Behar. We may declare it illegal and refuse its recognition in our courts, but we only thereby increase the evils of a system which, if it did not subserve some useful purpose, would not possess the vitality which it exhibits.

Subletting by occupancy ryots is undoubtedly an established custom—which has its uses, and which cannot be stopped. The question then arises—What are its abuses, and how can they be removed? The abuses of the system are summed up in paragraph 41 of the Statement of Objects and Reasons: “The power of transferring and subletting which the Bill recognizes may, in course of time, lead to a state of things in which the great bulk of the actual cultivators would be, not occupancy ryots but under-ryots with but little protection from the law.” If these fears are ever to be realized, it will not, in the Lieutenant-Governor's opinion, be from the recognition of the custom of subletting, which is nothing new, but from the accumulation of occupancy rights in the hands of rack-renting non-agriculturists through the operation of free sale. The prevention of evil from subletting therefore depends on the probability that mahajans and non-agriculturists will not invest their money in buying occupancy rights, or, if they do, on our success in limiting their power of rack-renting under tenants.

Now, from the statistics exhibited in paragraph 14 above, there is reason to anticipate that mahajans will invest their money in the purchase of occupancy rights; and the question how to prevent the evils contemplated as possible under such circumstances in the Statement of Objects and Reasons, demands consideration. In the Lieutenant-Governor's opinion an effective way to prevent these evils is by converting all purchasers of occupancy rights, who are not *bonâ-fide* cultivators, into tenure-holders, under whom the actual cultivator will have the protection afforded by the *status* of a ryot; and this was one of the reasons which induced Mr. Rivers Thompson to propose the definitions of “tenure” and “ryot” given in paragraph 6 above. The other check upon the purchase of occupancy-rights by mahajans follows from the proposals which I am to submit under the next chapter, regarding the rack-rent limits to be imposed on ryots' rents, and the checks on exorbitant enhancements.

16 The last section in this chapter which seems to call for notice is section 56. This section has met with much opposition from zemindars, and has also been condemned by other competent critics of the Bill. After carefully considering the question, the Lieutenant-Governor must say that the section as drafted seems to him to be too drastic. Had the occupancy right been made adherent to the soil only of such holdings as the landlord had acquired otherwise than by purchase, the section would not be so objectionable as many people now think it; but even then, it would, in Mr. Rivers Thompson's opinion, be based on an unconstitutional principle. The constitutional principle is that *ryotti* land cannot, under any circumstances, be converted into *khomai*, and that when *ryotti* land comes into the landlord's possession, he should be under an obligation to let it out at the current rates of rent. The Lieutenant-Governor desires to preserve this principle in its integrity and to enforce it; and he therefore must express his dissent from the opinion (which is, however, more suggested than definitely stated in paragraph 42 of the Statement of Objects and Reasons), that a landlord may, for an indefinite period, keep such *ryotti* lands in his own hands and cultivate them through his servants or by means of hired labour. He holds to the view that a landlord should be bound to let out such land to ryots for cultivation. It might be that even as the Bill stands the zemindar would in course of time be able to recoup himself for the expenditure incurred in the exercise of his right of pre-emption by imposing a fine upon the incoming tenant; and the matter would thus right itself. Still the Lieutenant-Governor agrees in thinking that the attachment of the right of occupancy to the soil, as in section 56 of the Bill, is founded on a wrong principle. The occupancy right is the attribute of the settled ryot, and it should not in this case be made adherent to the soil. Neither is it really necessary for the purpose in hand that it should be so, for, if the *ryotti* land acquired by the zemindar be let to a settled ryot of the village or estate, that ryot will hold it on an occupancy title at a fair rent. If it be not let to a settled ryot, but to a non-occupancy ryot, but few years should elapse before an occupancy title will accrue to him, if he be well-behaved and industrious. The Lieutenant-Governor would, therefore, modify section 56, and while insisting on the landlords letting out to ryots all *ryotti* lands of which they may become possessed by purchase or lapse of any sort, he would allow the other provisions of the Bill free play, believing that they will operate in the direction contemplated by section 56. This suggestion, however, pre-supposes, as an essential condition, that the proposal I am to make in paragraph 20 below, regarding the equalization of the *maxima* rents demandable from occupancy and non-occupancy ryots, be adopted. If a difference in the rack-rent limits for occupancy and non-occupancy rents be recognized, and the practically wide field for enhancing the latter, now allowed by section 119, be preserved in the Bill, then the Lieutenant-Governor will feel constrained to support a modification of section 56, only on the basis of compensation for disturbance on the principle stated in paragraph 24 below. When the law recognizes no difference between the limits up to which occupancy, and non-occupancy rates can be enhanced, zemindars can have no great motive in opposing the accrual of occupancy rights; but when such a difference exists, as section 119 of this Bill contemplates, or the absence of any rack-rent limit would import, then there is a most powerful incentive supplied to zemindars to defeat the growth of fixity of tenure. Looking to the past history of this question, no one can doubt that zemindars would act upon that incentive. It would be always in the power of a zemindar to eject the ryot in, say, the 11th year of his tenancy; or, if he admitted him to occupancy



rights, to insist on a rent which would render the position valueless. It is to be remembered that a non-occupancy ryot, on acquiring occupancy rights, is, under section 79, not competent to sue for an abatement of his rent.

Finally it would be necessary to adopt some stronger precaution than the wording of the section presents against recusance on the part of zemindars to let out *ryotti* land of which they may become possessed; and from this point of view it might be unobjectionably enacted by way of penalty that if such land were not let to tenants under the Bill within a year from its coming into the zemindar's possession, any ryot should be authorized to demand that it be let to him. When let under these circumstances, the mere possession should invest the tenant with an occupancy right. As it stands, the section is incomplete.

17. *Chapter VI.*—The Indigo Planter's Association strongly object to section 58 as drafted. They say that under the section as it stands it would be open to a ryot to repudiate every condition under which he held his lands at a low money rate of rent, while continuing to sit at the low rate alone. An instance from actual practice is given of an agreement made with a ryot, by which in consideration of his devoting a certain moderate quantity of land to growing indigo, the rent of his holding was greatly reduced; and it is contended that as the section stands it would be competent to the ryot to repudiate the agreement while holding at the reduced rent. Similar objections have been made from other quarters, and the Lieutenant-Governor thinks that they are reasonable. He therefore would suggest an amendment to the effect that not only the money rent, but the conditions of the holding, should remain unaltered till varied in due course.

18. Section 59, clause (2) has met with much opposition as being in the nature of "official legislation;" but in the Lieutenant-Governor's opinion the section is based on a right principle, and is likely to prove advantageous in practice. According to the old customary law of Bengal, it was the function of the ruling power to determine what rent the ryot was to pay, and when sanctioning the Permanent Settlement, the Court of Directors expressly reserved "the right which belongs to us as sovereigns of interposing our authority in making from time to time all such regulations as may be necessary to prevent the ryots from being improperly disturbed in their possessions, or loaded with unwarrantable exactions." \* The Lieutenant-Governor does not deny that the Settlement Regulation empowered zemindars to make agreements with their ryots, but it cannot be denied that all such agreements were both as to form and substance subjected by the same Regulation to official control. This control, partially relaxed by legislation, has been, in the course of time, completely ignored, until in parts of the country the ryot's capacity to pay has become the limit of the landlord's exaction. The provision under notice seeks only to re-establish a limit so that the ryots may not be "loaded with unwarrantable exactions," and it is therefore in harmony with the letter and spirit of the Permanent Settlement. Another objection to this provision is that the limit being less than that up to which enhancement might be had in suit, the tendency will be to drive people into court rather than abide by the section. It is obvious, however, that the limit affords ample scope for fair contracts in the great majority of conceivable cases. An enhancement of six annas in the rupee of rent is rarely possible now in any of the settled districts, except in the case of alluvial lands or revision of temporary settlements concluded long ago. Zemindars are only interested in the former, and for them further provisions will be suggested in paragraph 21 below.

19. The subject of the preparation of tables of rates is one to which the Government of India, on first considering this measure, attached great importance. The Lieutenant-Governor regrets, however, that he does not see much prospect of any practical results of great value coming from this part of the Bill. The general opinion is that the proposals, though good in theory, are unworkable, and that no such uniformity in rates exists anywhere in Bengal as would be needed for the basis of such a table. This view borrows considerable support from the special investigations which were made on this subject last year; and from the papers appended to Mr. Dampier's Minute of 25th June 1883, copy of which has been already submitted to the Government of India. Still Mr. Finucane's enquiries in Jessore, the success which has attended broad classifications of soil in Khoordah, and certain other information of a similar character from various portions of the country, point to the conclusion that if the provisions of Chapter VIB cannot be of general application, they may be found useful in special tracts. The Lieutenant-Governor would, then, retain those provisions with some modifications of detail, and these modifications might take with advantage the direction indicated by Mr. Dampier in his Minute above referred to, copy of which has already been submitted to the Government of India. The modifications to which the Lieutenant-Governor gives a provisional adherence are these—

"The Lieutenant-Governor, whenever such a course may seem necessary owing to existing rent disputes, to have authority to order the Revenue officers to enter upon any tract for the purpose of holding such enquiries;

"The Revenue officers to proceed to ascertain whether the circumstances of the tract are such that the preparation of a general Table of Rates is possible; and, if so, to prepare such a Table, or more than one Table if necessary;

"If the preparation of a general Table of Rates be not practicable, the Revenue officers to draw up Tables of prices of different kinds of staple produce, to be authoritatively declared as the average of prices which ruled during different specified periods, and which rule at the time being: these Tables when approved by the Local Government to be binding on the Civil Courts for the purposes of the Act;



"An interval to be then allowed during which the landlord shall endeavour to adjust the rents of the individual ryots amicably with the help of the Table of Rates or the Table of prices framed as above ;

"If he succeeds with few exceptions he may take the exceptional cases into court and the Revenue officers will hear no more of the matter ;

"If his attempt on the whole is a failure, let the landlord apply for a field-by-field survey and assessment of rent by the Revenue officers ;

"The cost in all cases to be distributed between the landlord and tenants, or thrown entirely on one of the two parties, at the discretion of the Revenue officers."

Such a procedure should, however, be applicable only when the Local Government thinks it undesirable to direct a settlement of rents or record of rights, and it should be liable at any time to be replaced by action under chapter XI or chapter XII.

20. Proceeding now to offer some remarks on Part C, Chapter VI of the Bill, I am in the

Proposal to restrict thikadars' right to enhance.

first place to call attention to the objections which the Commissioner of Patna urges against the exclusion from the Bill of restrictions on the powers of thikadars to enhance rents. The

Lieutenant-Governor agrees with the Commissioner in thinking that the abuse of the thikadari system has been the most efficient cause of rack-renting in Behar, and he thinks the repression of that abuse is essential to the prosperity of the Province. In Mr. Rivers Thompson's opinion, however, adequate guarantees against any improper exercise of farmers' powers will be found in the provisions for the survey and record of rights, and the Lieutenant-Governor prefers therefore to trust to that radical remedy rather than have recourse to any such expedient as the imposition of disabilities on a particular class.

Section 74 reproduces with emendations the enhancement provisions of the existing rent-law, and enables the landlord to enhance on three grounds—(1) that the ryot's rent is exceptionally low, (2) that the productive powers of his holding have increased otherwise than at the ryot's

Grounds for enhancing settled ryots' rent.

sole expense or agency ; (3) that prices have risen for reasons other than any brought about by the ryot's sole agency. To the first ground no objection is offered ; but it would, in Mr. Rivers Thompson's opinion, be well that the second and the third grounds should be so worded as to make it clear that improvements in produce and prices, due to combined action among ryots, will no more justify increase of rent than improvements due to the action of a single ryot. The latter is a very rare cause of improvement, while the former—the construction or improvement of a village channel, an embankment, or a road may furnish an illustration—is not uncommon in parts of the country.

In regard to section 75, the Lieutenant-Governor observes that the rule of proportion is no longer made the measure of enhancement in all cases. This is a very great concession to zemindars, and if it operates in inducing them to spend money on improvements, the results may justify the concession.

With reference to clause (d) of this section, Mr. Rivers Thompson thinks it convenient to consider here the prudence of introducing into the Bill any limit on enhancements, and if a limit be desirable, the propriety of fixing on one-fifth for occupancy and five-sixteenths for non-occupancy ryots.

In the first place, then, it must be said, or rather repeated, that the idea of regulating rents

Propriety of imposing maxima limits on rents, and recognizing separate limits for occupancy and non-occupancy ryots, examined. General considerations.

by a fixed proportion of the produce is not of recent growth in this country. It is of immemorial antiquity. Much obscurity exists as to what the State share of the produce was, but it seems sufficiently probable that the share, or rather its money commutation (*rebbā*), taken by the Mogul Government was one-fourth, and

this fourth share is pointed to as the prototype of the existing proposals on the subject. In the earlier stages of this discussion the zemindars of East Bengal, despairing of obtaining enhance-ments under the law, proposed that one-fifth of the produce should be allowed as rent ; and the British Indian Association, improving on this proposal, suggested one-fourth. But that one-fourth was a high proportion even in the opinion of that Association is manifest from the quasi-official admission made by their representative organ that "if a higher rate or share (than one-fourth) be fixed for the landlord, it will trench on the very means of subsistence of the ryot." And again, "one-fourth would be too high for many parts of the eastern districts." It is beyond question, however, that the circumstances of districts in different parts of the province admit of considerable variation in this particular.

From the preceding it will be apparent that the idea of regulating the rack-rent at the present time by assigning a maximum portion of the produce to the landlord has been approved by the zemindars ; but Mr. Rivers Thompson is free to confess that he does not look on the proposals, hedged round even as they are in the Bill, with unmixed satisfaction. As one officer puts it, "no rational rent scheme can be based on a fractional share of the gross produce ;" and even if the net produce were taken instead of the gross, it would still be very difficult to hit on a maximum limit which would not be unequal in its incidence over a Province so diversified as Bengal. Another source of disquiet on this subject is the fear that the existence in the Bill of maxima limits may unduly stimulate that tendency to a rise in rents, which exists in every progressive community, and that efforts will be made by landlords to convert the maximum limit of the Bill into the ordinary measure of rents in practice. "Once," says the Behar Landholders' Association, "let Government fix a maximum rate, and no zemindar will rest until he has run up his rents to the prescribed limit."

All this said however, it must be admitted that there are large portions of these Provinces in which a maximum limit on rent cannot fail to be of advantage. Those portions are so heavily rented that it would be a source of peace and contentment to the cultivators. If they

had some idea of the limit beyond which their landlords' demands cannot pass. The Bill gives to the landlords an effective procedure for enhancement; if it also give the ryot some assurance of the ultimate limit beyond which, under that procedure, enhancement may not pass, it will probably do good. As Sir Richard Temple said, "the liability to uncertain demands must harass the ryot, must damp his zeal for improving his land, and must make him chary of laying out capital upon it." While thus giving his adhesion to the principle of a maximum limit, Mr. Rivers Thompson, however, desires very emphatically to say that if he believed the safeguards in the Bill were insufficient to keep the provision what it is intended to be—a maximum never to be passed, and but very rarely to be reached—he would prefer to abandon the provision in the Bill.

As regards the propriety of the exact limit of one-fifth, Mr. Rivers Thompson admits that the question is one on which actual precision of knowledge or judgment is not possible. I am, however, to say that, after carefully considering all the information of a general and special character which has been accumulated on the point, the Lieutenant-Governor's opinion is that, for the Province as a whole, one-fifth of the gross produce allows a margin for future enhancements; while it represents as much of the crop as the ryot can part with and thrive. References to the share of the produce to which in former times the State might in theory be entitled to take as an extreme measure from the cultivators are very greatly out of place in dealing with existing facts. When population was scanty, the area of culturable land practically unlimited, and the produce large from a soil not overworked, a village or estate could well afford to give to the rent-receiver a large share of that produce. But where there is no margin of culturable land at all, and where population presses so densely on the soil that it is a marvel how life can be supported, and where agriculture has, in this struggle for existence, degenerated into a mere "spoliation of the soil," the aspect of the case is entirely changed, and references to theoretical rules of crop-distribution at some early period of time become unmeaning. This is the case throughout large portions of Bengal and nearly all Behar at the present day, and if one-third was a rack-rent 100 years ago in those localities, then one-fifth is a rack-rent there to-day. And to this conclusion Mr. Rivers Thompson has been led, not merely by such considerations as those now adverted to, supported as they are by statistical information as to the growth of population which cannot be questioned, but also by the general opinion of competent authorities that the costs of cultivation have largely increased; that, owing to the absence of all improvements in the system of agriculture, the average harvest yield is stationary where it is not growing less; and that the struggle for life among the agricultural community is, the deceptive influences of a few years of unusually good harvests notwithstanding, daily becoming more severe. It may be added in this connection that Mr. Rivers Thompson has given a practical proof of his conviction upon this point in his recent orders reducing the rental which had been assessed on the Khoordah Estate.

If the one-fifth, or 20 per cent. limit, be justifiable as regards occupancy ryots, the question remains—Is five-sixteenths or  $31\frac{1}{4}$  per cent. of the produce fair as regards the non-occupancy ryot? On this point I am to suggest, for the consideration of the Council, whether the provisions of section 119 of the Bill, as far as they refer to what is there called the "ordinary" ryot, do not introduce an unconstitutional and dangerous principle into the law of Bengal. In the statement made by the Hon'ble Mr. Reynolds in his speech in Council, to the effect that it is not, and never has been, the law of Bengal that an occupancy ryot should hold at privileged rates, the Lieutenant Governor concurs; and it therefore becomes a matter for consideration whether, if the one-fifth limit be fair for ryots with occupancy rights, five-sixteenths is not unfair for ryots without them. The origin of the provision as it stands is probably due to Sir Richard Temple's effort to fix occupancy rates with reference to competition rates, by giving the occupancy ryot a beneficial deduction on such rates. But the enquiries which were made in connection with that proposal showed that competition rates hardly existed, and that custom, not competition, ruled the rents of occupancy and non-occupancy ryot alike, unless where considerations of caste intervene. Recent enquiries point to the same conclusion, and it is therefore, in the Lieutenant-Governor's opinion, a matter of doubtful expediency that a novel principle should now be introduced into the law of these Provinces, which, besides, would be calculated to lead to general enhancements of rent, which it is the avowed object of the Government to avoid. It must not be forgotten that if we call into existence two classes of occupancy ryots, one holding at higher rates than the other (and this would be the effect of sections 79, 95, and 119 of the Bill combined), the tendency will be towards an equalization of rates at the higher level. As at present advised, Mr. Rivers Thompson thinks that this is a danger which we should not run the risk of incurring, and that if a rack-rent limit is to be preserved in the Bill at all, it should be the same for both occupancy and non-occupancy ryots. He has no objection to five-sixteenths of the produce in the case of under-tenants (khudwas) who can never acquire occupancy rights; but he thinks that there is great danger to the cultivating classes in the provision of a separate limit for occupancy and non-occupancy ryots. Separate limits are tantamount to a premium on the discouragement of fixity of tenure.

I am, therefore, to say that the Lieutenant-Governor is not prepared to support those provisions of the Bill which recognize a difference between the maximum limit on the occupancy and non-occupancy rents. The longer Mr. Rivers Thompson considers this point, the more satisfied is he that these provisions are likely to cause serious injury to the best interests of the peasantry of these Provinces; while the retention of them in the Bill impedes the reasonable settlement of the question before the Council. If the maximum or rack-rent limit on

occupancy and non-occupancy rates alike be fixed at the same proportion of the produce, then, in the Lieutenant-Governor's opinion, it would be possible to dispense altogether with compensation for disturbance, which is only useful as a check upon the abuse of the landlord's power to eject. If a landlord can only obtain from a non-occupancy tenant under the law a rent not greatly exceeding what he can get from the settled ryot, he probably will not care to eject the former, and thus checks upon his power of ejectment will be less needed. If, however, the motive for ejectment supplied by the Bill as it stands be not removed, and the same limit be not imposed on the enhancement of the rents of occupancy and non-occupancy ryots alike, then some provision must be made for compensation for disturbance as a precaution against an abuse of the right to eject. To this point I am to return further on.

I am here also to draw attention to the second check on rack-renting by mahajans to which allusion was made in paragraph 15 above. As long as it is in the power of a tenure-holder to exact up to 31½ per cent. of the produce, so long will a wide field for rack-renting be provided, and the growth of occupancy rights at fair rents suppressed. But if the rack-rent limit be reduced to a reasonable limit within which a fair rent may be fixed, then remunerative cultivation by non-occupancy ryots will be possible, and the growth of occupancy rights among that class not discouraged. The discouragement will be to those who buy occupancy rights, not for the purposes of cultivation, but for subletting. They will be deterred from such investments by the fact that they cannot recover from their tenants much, if anything, more than they themselves will have to pay their landlords. In any case their tenants will be allowed a margin to live on and a fixed *status*. All this would be impossible if separate limits be preserved in the Bill. The occupancy right would then be valueless, for it would carry with it no right to enjoy any margin of profit.

21. Passing on to other portions of the Bill, the Lieutenant-Governor would suggest that, from the provisions of sections 76 and 78, the case of *dearah* or alluvial lands, and new reclamations, be excepted. These lands are quite exceptional in character, and need special treatment. They may be worthless this year, and most productive the next. According to custom in various parts of the country, alluvial lands are rented at merely nominal rates on formation (though they are then usually unproductive sand) in order that the ryot may establish some claim to hold them when the soil has fully formed. The full formation may be brought about by a rich deposit in a single season. It would be very hard, then, on a landlord, if he were precluded from doing more than doubling a nominal rent for such land within ten years. In the interests of landlords generally, therefore, and having full regard to what is due to ryots, the Lieutenant-Governor would suggest that partially formed alluvial accretions and new reclamations be excepted from the effect of these sections. For accretions or reclamations which are fully formed and ordinarily productive, there is no need to provide exceptional treatment.

22. To Part E of this chapter the Lieutenant-Governor has no objection, fully agreeing as he does in the policy of facilitating the conversion of corn rent into money rents. Exception has been taken to these provisions as one-sided, and it is claimed that the faculty of suing for commutation should be vested in the landlord, as well as in the tenant. Impressed with the economical disadvantages of the general prevalence throughout a district of the *baoli* system, the Lieutenant-Governor would be glad to see a system of money rents take its place, and he would make no objection to affording to both parties—to the landlord, as well as to the tenant—the facilities which the Bill now allows to the ryot alone.

#### CHAPTER VII.

23. The principle which underlies this chapter seems to the Lieutenant-Governor to be that the right of a settled ryot in the homestead portion of his holding is separate from, and independent of, his right in the arable lands which he rents. Wherever the facts are as supposed, wherever the *bastu* holding is distinct from the arable holding, no objection can be taken to the section. But there are, it is understood, portions of the country where this custom does not prevail, and where the *bastu* even bears no rent, being given as a matter of course with the arable land, and therefore not separable from it. In these parts the principle of the section might, if enforced, lead to difficulties. The Lieutenant-Governor would therefore follow local custom. Where *bastu* lands are separate from the *jotes*, he would apply the section. To the cases where *bastu* lands are not separable from the *jotes*, he would not make the ryot's interest in *bastu* longer or more short-lived than in *ryoti* land. The general principles of the Bill would, of course, be applicable to both classes of land without distinction.

#### CHAPTER VIII.

24. As might be expected, this chapter has met with extreme opposition from zamindars, while the revenue and judicial officers who have been consulted on it seem to be divided into hostile camps. Those whose service has been mostly in Bengal Proper are against its proposals as being an innovation of an unnecessary character, while the Behar officers would accept them, provided freedom of contract between the landlord and the non-occupancy ryot be not barred. As the chapter stands, the non-occupancy ryot can only be ejected (1) for arrears of rent,



(2) for violation of the conditions expressed or implied of the lease, (3) for refusal to pay enhanced rents; and if ejected on any of these grounds, he is declared entitled to compensation for disturbance, as well as for improvements. The Behar executive officers, as the Lieutenant-Governor understands their proposals, would not limit in any way the landlord's power to eject, but in return for this freedom would give the tenant, if ejected, compensation for disturbance. They say nothing of compensation for improvements, though it appears from the earlier papers that the Behar Committee, under Mr. Halliday's presidency, were on the whole in favour of the proposition.

In commenting on this chapter the Lieutenant-Governor must, in the first place, take exception to the term "ordinary," as applied to the non-occupancy ryot. All the information before this Government goes to prove that the occupancy status in these provinces is (if facts were duly recorded) the rule, while the non-occupancy status is the exception. If the term "ordinary" ryot is to be maintained, it would be more in accordance with facts to apply it to the occupancy ryot than to preserve the meaning it now has in the Bill. It would, however, be better to substitute for "ordinary" the term "non-occupancy," or "non-settled."

Coming now to the criticisms on the chapter, the Lieutenant-Governor conceives, in regard to compensation for improvements, that, notwithstanding all that has been said to the contrary, no reasonable dissent can be maintained from the proposition that it is desirable to give security for the invested capital of the tenant, no matter what that tenant's status may be. The history of the rent-question all the world over teaches this lesson, that want of such security has been a hindrance and a bar to good husbandry, and therefore politically inexpedient. It seems to Mr. Rivers Thompson that if an ordinary tenant improves his holding by sinking capital in it, he is as much entitled to compensation as if he had lent his money to the landlord on a promissory note payable on the determination of his tenancy. It is no valid objection to say, with the British Indian Association, that in this country ordinary tenants never do improve their holdings, and that the compensatory provisions of the law are therefore unnecessary. The fact may be as the Association asserts, and it is possible that for a long time no practical results will follow the adoption of the provision in question. At the same time experience proves that agricultural improvement is a plant which flourishes only in the soil of security, and it is useless to argue that because it has not flourished while insecurity prevailed, therefore it will not take root when security becomes the rule. The Lieutenant-Governor has in a previous communication informed the Government of India of the extreme importance he attaches to stimulating agricultural improvement. No means in his judgment could be more legitimate than that afforded by this provision of the Bill, which, besides, has already found a place on the Indian Statute Book in section 44 of the North-Western Provinces Rent Act (XVIII of 1873). It is unreasonable to expect a ryot to improve his holding if you do not secure to him some fruits of his capital and industry.

But it is asserted if compensation for improvements to the non-occupancy ryot be in accordance with good policy and natural justice, the same cannot be maintained of compensation for disturbance. On this important question the Lieutenant-Governor must, in the first place, refer to what has been already said in paragraph 20 above on the unwisdom of legally establishing different limits on rent rates payable by settled and unsettled ryots. His belief is that the limits for both should be the same; and if his belief be accepted by the Council, he thinks that it is unnecessary to impose a check on the abuse of the landlord's power to enhance non-occupancy rents by any such provision as this of compensation for disturbance. But if on this point the Council disagree with him, and decide on preserving a limit for non-occupancy rates in excess of settled ryots' rates, then Mr. Rivers Thompson thinks that the incentive which would be thereby furnished to landlords to rack-rent and defeat the growth of tenant right should certainly be subjected to a positive check. As to what the character of the check should be, the Lieutenant-Governor's judgment is in the nature of a compromise between divergent views. He does not, on the one hand, accept as just and fair to the landlord the provisions of the Bill which entitle all non-occupancy ryots, if ejected, to compensation for disturbance; nor, on the other hand, can he approve the position that a landlord is to be absolutely free to eject with impunity a ryot, say, in the 11th year of his tenancy, who is industrious and law-abiding, and willing to conform to his landlord's reasonable demands.

The uncompromising opponents of the provision in question appeal to the customary law of the country at the time of the Permanent Settlement, and to the status of the *put hast* ryot at that time, in proof of their contention that the non-occupancy ryot of to-day should have no privileges beyond those which his contract with the landlord may secure to him. On this I am to say that it seems, as from the beginning it always has seemed, to the Lieutenant-Governor, that too much stress is laid throughout these discussions on arguments of an antiquarian character, and too little stress on what is politically expedient in the circumstances of the present time. Mr. Rivers Thompson believes it to be true (though it may not be universally admitted) that the *paikhasht* ryot of the last century was only a "tenant-at-will," but the fact of competition then being among zemindars for ryots, and not among ryots for lands, rendered the *paikhasht* ryot's condition better in many respects than the condition of a modern "tenant-at-will." In fact, if *quoad* the "tenant-at-will" the modern landlord be master of the situation, the *paikhasht* ryot was usually its master.

*quoad* the zemindar of 1793. It therefore seems to the Lieutenant-Governor that appeals to the status of the *paikhasht* ryot of a century ago are calculated to throw but little light on what treatment should be accorded to the non-settled ryot of to-day. There are differences on essential points, not the least important, being that, while the *paikhasht* ryot of the Regulations held at low rates, the non-settled or non-occupancy ryot of to-day enjoys no such privilege, but usually pays as much as occupancy ryots do.

From one point of view, however, the zemindar of a century ago may be, without any risk of dispute, said to have had the power of ejecting the *paikhasht* ryot, because he had only to ask occupancy rates to assure the ryot's throwing up his holding. So far there is no doubt about the *paikhasht*'s holding being more precarious than the permanent cultivator's. As Mr. Colebrooke says, "the inconvenience of remote cultivation makes it necessary that he (the *paikhasht*) should be at liberty to relinquish at any time the land which he uses; and consequently his own continuance being precarious, he cannot have a title of occupancy which shall preclude the landlord from transferring the farm to a resident husbandman desirous of undertaking it." If, however, the *paikhasht* agreed to pay up to the *pergunnah* rate, which was all that could be demanded from the resident husbandman, it is very doubtful if the zemindar had the power to eject him; for in the discussions which preceded the enactment of Regulation I of 1793, the Governor-General authoritatively wrote: "Whoever cultivates the land, the zemindar can receive no more than the established rent, which in most places is fully equal to what the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with the power to commit a wanton act of oppression." (Appendix to Fifth Report.) The truth, however, is that in these days the thoughts of zemindars were directed to installing ryots, not to ejecting them. Ejectment in its present acceptation is a modern growth, and in every advancing society it is being placed under restrictions.

Notwithstanding all this, however, it cannot be denied that there has grown up a custom which our courts have recognized, under which zemindars exercise the right to eject non-occupancy ryots for other reasons than non-payment of rent; and that custom, though it now calls, in the general interest, for some modification, cannot, in the Lieutenant-Governor's opinion, be abrogated. If there be little force in the argument that the provisions of the chapter are unnecessary because the ryots to be legislated for are few, there is, in Mr. Rivers Thompson's opinion, much force in the contention that the proposals as they stand are objectionable because they deprive the landlord of discretion as to who shall become a settled ryot in his estate, and because they virtually fine him for exercising that statutory power with which other provisions of the Bill invest him.

It seems to the Lieutenant-Governor that the circumstances of the case call for a compromise between the claims of the zemindars to eject an unsettled ryot at discretion, and the provisions of the Bill which give the ryot compensation no matter for what reason ejected. That compromise might, Mr. Rivers Thompson thinks, fairly take this form (always supposing that his earnest suggestion to equalize the limits of occupancy and non-occupancy rates be not accepted by the Council). As a landlord cannot eject a non-occupancy ryot except in execution of decree, let the Court in ejectment suits have jurisdiction to fix a fair rent, at which it shall be optional with the landlord to let the ryot sit or not. If the landlord consents to the ryot's sitting at that rent, and the ryot agree, no difficulty arises. If the landlord abides by the Court's orders, but the ryot demurs, let the ryot be ejected without compensation. If the landlord refuses to let the willing ryot sit at the rent declared fair by the Court, being within the maximum limit, then make the landlord pay the ryot compensation for disturbance. The landlord will thus retain the ultimate right of ejecting the ryot, and this is all he needs in order to get rid of a ryot for other reason than refusal to pay an enhanced rent.

#### CHAPTER IX.

25. Sections 96 to 99 inclusive call for no remarks. In regard to section 100, it is pointed out that the form of receipt will not apply to some of the eastern deltaic districts, where the area of the holding varies from year to year with the price of produce or other causes, and where it is impossible therefore to define that area in any except the receipt which forms the acquittance for the year's demand. The adjustment of the terms of the receipt to such exceptional circumstances is a matter for arrangement, and the Lieutenant-Governor would retain for the Local Government a power to fix the form of the receipt, as circumstances may dictate, while preserving the substance.

Several critics of the Bill, among others the British Indian Association, draw attention to the provisions of section 101, and declare that they are innovations, the zamindar being "on no earthly ground bound to give" the statement in question. They would therefore omit section 101; or, if it be retained, they would make the ryot pay for the statement of account which it prescribes. The Lieutenant-Governor would, however, point out that, so far from being an unreasonable innovation, the provisions in question were, for 80 years after the Permanent Settlement, the law of the land. "Receipts for all sums received, and a receipt in full on the discharge of every obligation," were prescribed by section 63, Regulation VIII of 1793; and it was only when that section was repealed by Act XVI of

1874 that the provisions ceased to have binding force, though doubtless zamindars had ignored them. The Lieutenant-Governor considers the provisions salutary, and to the revival of them he gives his support. They will introduce no change into the existing practice in a large portion of these provinces where acquittances in full (*far khaltis* in the vernacular) are always given at the end of the year when accounts are cleared up.

26. Coming now to the section regarding deposits of rent, I am to state that considerable opposition has been exhibited both by zamindars and Government officers to the provision of section 103 (a), which makes the ryot's belief that his rent will not be accepted on tender by the landlord a sufficient reason for depositing it in court. The opposition on this point is perhaps to some extent a matter of sentiment, but it is also, in the Lieutenant-Governor's opinion, not without reason, for the withdrawal of deposits from civil courts is attended with delay and some expense, while the freedom which the section would confer on the ryot tends unnecessarily to alienate him from the zamindar. Mr. Rivers Thompson is aware of what has been written on the subject from the opposite point of view—among others by the Hon'ble Mr. Reynolds in his memorandum of 15th May 1881—; and he observes that in the Statement of Objects and Reasons it is re-asserted that the present declaration of previous tender has become a mere form. This is, probably, in a measure, true; but it certainly is not universally true; and the Lieutenant-Governor is therefore disposed to defer to the opinions of those experienced officers who deprecate the adoption of the section as it stands. He would accordingly be glad if means could be adopted which would discourage deposit without previous tender, while still preserving to the ryot the faculty provided by the section. This means might, Mr. Rivers Thompson thinks, be found in an adjustment of stamp duties to the requirements of the case. Deposits after tender might, as at present, be made on a stamp of the value of eight annas, but deposit without tender under the provisions of section 103 (a) might be made chargeable with a higher stamp duty. It will be remembered that under the practice current before Act X of 1859, deposits of rent in court were chargeable with stamp duty, as in suits for arrears. The suggestion thus made is no doubt open to obvious objections; but so is the section as it stands in the Bill, and the question is therefore a choice of evils. As no very widespread, though undoubtedly some, hardships have arisen from the existing law, in which tender before deposit is essential, it seems to the Lieutenant-Governor that any extension in the ryot's favour of existing privileges should not be made unnecessarily at the landlord's expense, and should carry with them deterrent incidents to prevent abuse.

Finally there is no reason apparent to the Lieutenant-Governor why the existing jurisdiction of the civil courts in regard to deposits should not be retained. The discretion conferred by sections 104 and 106 on the officer empowered to receive deposits can be exercised as effectually by a rent-suit moonsif as by a revenue officer; and as the civil courts will continue to exercise jurisdiction in rent suits under the Bill, there is a distinct inconvenience in establishing a dual jurisdiction in connection with the receipt and acknowledgment of rent arrears.

27. On part F of chapter IX the Lieutenant-Governor will only remark that it should be made clear, under section 117, that under the system called *agore-batai* the landlord has a right to watch the crop up to the division, and that the ryot cannot remove the crop till division has been made. Under section 118, also, Mr. Rivers Thompson does not, with the majority of Behar offices, see what good is to come from filing the *danabundi* papers in Collectors' offices in all cases. When the system of village agency is organized in accordance with the plan indicated in my No. 309T—R, dated 1st June 1883, the patwari and canoongoe will be the proper custodians of such papers. But until that agency is established the Lieutenant-Governor thinks that it would suffice if in disputed cases alone the *danabundi* papers should be deposited in the collectorates. To deposit them in undisputed cases would be to crowd the record-rooms with a mass of useless papers.

28. With reference to section 121, the question arises whether that section, taken with section 20, covers the case of an estate managed by the revenue authorities on account of the recusancy of the proprietors. Fair rents are, as section 121 stands, to be fixed "on the application of the landlord or of the tenant." When the State receives the rents, allowing the proprietor *malikhana* will it be deemed the landlord for the purposes of the section? The answer should, in Mr. Rivers Thompson's opinion, be in the affirmative, and made clear in the Bill.

In connection with this subject, the Lieutenant-Governor will notice a remark made by the British Indian Association, "that nothing would create greater confidence in the minds of the people in the justness of an Act defining the rights and obligations of landlords and tenants, than the fact that it applies equally to Government in its capacity of landlord as to private landlords." Concurring in the justice of that remark, Mr. Rivers Thompson desires to emphasize the fact, that the rights and privileges which the Bill proposes to recognize in regard to ryots generally, will, practically, be as largely enjoyed by the ryots in Government estates, as by those in estates which are permanently settled. Fixity of tenure, fair rents, and free sale, will, the Lieutenant-Governor trusts and believes, within a short period of time prevail throughout all Government estates where these advantages do not now exist. If we turn from ryots to landlords, the Lieutenant-Governor would say that the only privilege which Government retains, over and above those conferred by the Bill on zamindars, is the privilege



of the certificate procedure; and the reason why Government may fairly reserve this privilege is obvious. The certificate procedure in the hands of public officers should be safe from abuse, for there is no direct incentive to abuse it, and its exercise is subject to watchful official supervision. That is one, and in itself a sufficient reason, why a procedure for collecting rents may be given to the Government which cannot be safely entrusted to private individuals. But there is, besides, the paramount reason that the rents collected by Government are really revenue, and the procedure for enforcing payment of State dues must, in the general public interests, be more summary than the procedure for enforcing private dues. If this were not so, the ultimate result would be the employment of larger establishments, greater expenditure, and increased taxation. Thus a summary procedure for collecting the public revenue, while necessary if the government of the country is to be efficiently administered, and while not open to the objections to which a summary procedure for collecting private debts is exposed, is in the long run the easiest and cheapest for the people. Nor is this principle inapplicable in case of estates of disqualified proprietors managed by Government, for the rents of such estates include the revenue.

#### CHAPTER X.

29. The provisions of part A of this chapter have the Lieutenant-Governor's general approval; but he thinks that sections 127 and 128 might more explicitly declare that where the improvement to be effected does not lie within the holdings to be benefited (as in the case of an embankment), the ryots should still have the option of effecting it. Where an improvement affects more than one holding, the landlord should serve notices on all the ryots, and ryots collectively might serve notices on their landlord. Perhaps, as under the General Clauses Act, the singular includes the plural, the use of the word ryot may be taken to mean all ryots affected; but it might prevent mistakes if the point were made quite clear.

In regard to Part B of this Chapter, dealing with the landlord's right to measure land within the limits of his estate, the Lieutenant-Governor has some doubt whether the section, as drafted, expresses the intention of the draftsman as stated in paragraph 92 of the Statement of Objects and Reasons. As the section of the Bill stands, it is questionable whether a landlord can measure a *rent-free* holding forming part of his revenue-paying estate. Under the existing law the landlord is precluded from measuring such a holding, because he is not in receipt of rent from it; thus it is proposed in the Statement of Objects and Reasons to alter, but the alteration does not appear in the Bill. The Lieutenant-Governor must confess that he does not view the proposed change in the law without some misgivings; but if the law is to be altered, he would provide against the abuse of the power of measurement, and against the possible creation of disunion between the rent-free holder and his tenants, by insisting on the landlord contenting himself, except for good cause shown, with a survey of the external boundary of the tenure. This will give the area, which is all the landlord can want to know in the great majority of cases. Under any circumstances the zemindar, if so advised, could sue in the civil courts to establish his rights if he is under the belief that the lakhrajdar holds more lands than he is entitled to hold under his grant.

30. Sections 134 to 137 are given as reproducing sections 176 and 177 of the Bengal Bill; but the Lieutenant-Governor does not find that section 178 of the latter Bill, which itself reproduces section 38 of Act VIII of 1869, finds any place in the Bill now under discussion. This seems to Mr. Rivers Thompson a serious omission; for many incoming landlords, especially auction-purchasers, will find it very difficult to overcome combinations to withhold rents among their ryots, if deprived of the procedure provided by section 38 of Act VIII of 1869. The justification for the exclusion of that procedure from this Bill is the introduction of the provision for settlement of rents and record of rights. These provisions, however, are at present only applicable to disputes on a large scale; they can only be put in motion by the Local Government, and are therefore inapplicable to such cases as section 38 of Act VIII of 1869 was intended to meet. Accordingly, the Lieutenant-Governor trusts it will be found possible either to amplify this part of Chapter X so as to include the provisions of the existing law regarding the measurement of land when it cannot be ascertained who are the persons liable to pay rent, or so to extend the provisions regarding record of rights as to enable the Government to apply the procedure to suit the wants of individuals.

31. In regard to the doctrine of merger, the Lieutenant-Governor has nothing to say except that, as the doctrine is novel, it may be made clear that if a landlord buys an occupancy right under chapter V of the Bill, the occupancy right is extinguished, and the land becomes part of the ryoti land of the estate. The provisions regarding merger probably imply this, but it would be well by an explanation to make the matter quite plain.

32. Here I am to take the opportunity of stating that the Government of India has recently asked this Government whether it would not be desirable to introduce into the Tenancy Bill a section similar to section 28 of the North-Western Provinces Rent Act (XVIII of 1873). The question had already attracted the attention of the Lieutenant-Governor, and he is now prepared to say

that, while he has no objection to the introduction of such a provision into the Tenancy Bill he considers that it will not be as productive of good results in Bengal as in Upper India. In the first place it must not be forgotten that by far the greater part of these Provinces is permanently settled, the revenue bearing to the rental a proportion of one to five, if not less; and in the next place that there is usually a long chain of subinfeudation between the zemindar and the ryot. No zemindar, with a small revenue charge and a large rental, will consent to remit rent in proportion to a remission of revenue, while if he only remits a sum equal to the remission made him, the effect on the ryots would be small, even if it ever reached them through the long line of tenure-holders which often intervenes between them and the proprietor. These, however, are objections of practice, not of principle, and the provision might be useful in temporarily-settled estates. From this point of view the Lieutenant-Governor makes no objection to the introduction of a section similar to section 23, Act XVIII of 1873. If such a provision be introduced, it would become desirable to charge interest on the suspended demand; and therefore advantage should be taken of this opportunity to repeal section 2, Act XII of 1841, which prohibits Government from charging interest on revenue arrears.

#### CHAPTERS XI AND XII.

33. The provisions regarding settlement of rents and records of rights are, in the Lieutenant-Governor's opinion, among the most important of the Bill, and he observes with great satisfaction that they meet with but few, and there unimportant, objections at the hands of the representative Associations in these Provinces, while most officers approve of them. Reserving minute criticisms for later communications, Mr. Rivers Thompson will only say, in regard to Chapter XI, that while on the one hand, in section 157 the period allowed for objection appears to be too short; on the other hand, the facilities for appeal and for contesting the Settlement Officer's proceedings afforded by sections 160 to 162 are too wide and numerous. The matter is one which calls for finality; and the Lieutenant-Governor sees very serious disadvantages in the proposals to invest the civil courts practically with the faculty of revising on all points the work of the settlement officers. On questions of law there is no objection to an appeal being allowed to the civil courts; but on questions of fact such as are involved in clauses (b) and (c), proviso (2) of section 160, it seems to the Lieutenant-Governor that the civil court is a less competent judge than the Settlement Officer. If, after the *jummabandi* has been published, and has, under section 159, acquired validity, a material error of fact is discovered, there would be no objection to a correction being made, as is now done under section 25, Regulation III of 1872 (Sonthal Pergunnahs Settlement Law); but in this case the authority to direct the correction should be the Local Government, or some executive authority vested with powers of the Local Government, and not the civil court. It would, in the Lieutenant-Governor's opinion, seriously diminish the beneficial operation of these provisions if the *jummabandi* were open to revision by the civil courts on any question of fact; the zemindar, who has the longest purse, would be sure to prevail over the ryot in the long run, no matter how weak the former's case; and therefore Mr. Rivers Thompson very strongly recommends that sections 160 to 162 be revised with reference to these considerations.

34. Sections 164 of the Bill as drafted makes the previous sanction of the Governor-General in Council necessary whenever the Local Government *proprio motu* desires to make a record of rights. This, in Mr. Rivers Thompson's opinion, is an unnecessary restriction on the discretion of the Local Government, and one which can lead to no possible good, while by delaying action it may cause a good deal of harm. Commenting on section 151, the British Indian Association say: "The circumstances which would justify the removal of a tract of country from the jurisdiction of the ordinary courts, and placing it, for the purposes of settlement of rent, under the jurisdiction of revenue officers, must be of an exceptional character. The first ground, therefore, on which this section would allow such removal is very objectionable. Let the Local Government have the power of ordering such a transfer when an agrarian disturbance is threatened, or when settlement in a khas mehal is to be effected; but it would be dangerous to give a number of landholders or a number of tenants the right of applying for it." Without admitting the reality of the danger referred to (for the right of sanctioning or refusing the application will still rest with Government), Mr. Rivers Thompson agrees with the Association in thinking that in such matters the Local Government is the best judge of when and how action should be taken; and if this be true regarding the questions raised by Chapter XI it is obvious that it is not less true of the operations under Chapter XII. The Lieutenant-Governor, would, therefore, recommend the omission of the words "in any case with the previous sanction of the Governor-General in Council" from section 164.

Finally, provisions similar to those of sections 157 to 160 should (with the modifications suggested above) be introduced into chapter XII. Full opportunity for discussing disputed facts should certainly be afforded before the record of rights becomes final and binding. It is presumed that, in making the record, the revenue officer would have full power to make all surveys and enquiries that might be necessary to prepare a complete record of all rights in the tract in which he was operating. As this is not expressed in the section, it might be well to obviate the possibility of doubt upon the point by a definite provision.

35. An objection is taken by the Committee of the Behar Landholders' Association to this portion of the Bill, on the ground that no assurance is given that the settlement procedure will not be utilised to reduce existing rents; and the Lieutenant-Governor believes that the idea is very prevalent among zemindars that the effect of the Bill as a whole will be to effect an immediate and serious reduction in their rents. As far as the Lieutenant-Governor understands the matter, this is not the intention of the Legislature. When the Bill becomes law, indeed, it will not be possible for any landlord to recover by legal proceedings rents above the *maxima* or rack-rent limits fixed by the Bill; and in whatever tracts of country settlement proceedings under chapters XI and XII may be instituted, the *jummabundis* resulting from such proceedings will shew no rents above these limits. Subject, however, to this restriction, existing rents would not be interfered with under the Bill; they would be recorded as payable for the existing holding.

#### CHAPTER XIII.

36. The provisions regarding distraint have met with as much opposition from the zemindari interest as perhaps any other part of the Bill; and for his own part the Lieutenant-Governor thinks that there is some ground for this opposition. He does not, indeed, think that in the case of settled ryots—and they, according to all information, will form the great bulk of the rent-paying class—landlords would have any serious difficulty in collecting their rents, even if distraint were altogether abolished in regard to occupancy holdings. Occupancy rights are now valuable, and will grow in value. They afford adequate security for the landlord's rent; and if in regard to them facilities for distraint be abolished, the landlords will not ultimately be the sufferers. Mr. Rivers Thompson would be glad to think that settled ryots themselves will suffer nothing from the danger they are likely, in the beginning at all events, to run of losing their all through unpunctuality in paying their rents.

But if landlords' rents are adequately secured by the transferability of the occupancy right, there is no such security in the case of non-occupancy and *khurfa* ryots. It is in regard to these that the restriction of the landlord's power to distrain will be most felt. That the power to distrain, as it now exists, has been abused is beyond question; that it is still abused, especially in Behar, is equally indisputable, though the abuse is probably not so flagrant nor so extensive as it once was; but, granting all this, the Lieutenant-Governor has reason to believe that the abuses are quite within the ability of the executive to check and to suppress, and he therefore hesitates to deprive landlords (for the provisions of the Bill virtually mean deprivation) of the only effective means they have of collecting rents from the "non-occupancy" or *khurfa* ryots. Mr. Rivers Thompson would be quite prepared to agree to any proposals which have for their object the more effectual enforcement of the existing law of distraint, and he thinks this may be attained by making violations of the existing law of distraint punishable, as in the case of criminal trespass, under the provisions of the Penal Code, and by enacting that persons benefiting by such offences should be similarly liable to punishment. Thus armed, the district officers should be able to deal adequately and fully with the abuses of distraint, and he would, therefore, submit that the present law of distraint might with such substitution of penalties for civil damages be left unaltered in regard to all non-occupancy ryots. If this view were accepted, the Lieutenant-Governor would recommend the abolition of distraint altogether in regard to occupancy holdings. Indeed, with the stamp duty chargeable under section 167 (2) of the Bill, it is not apparent what great advantages landlords would derive from the distraint sections of the Bill which are not secured to them already by the procedure for attachment before judgment under the Civil Procedure Code.

#### CHAPTER XIV.

37. It is very generally admitted, and properly so in the Lieutenant-Governor's opinion, that the abbreviated procedure for the recovery of rent contained in this chapter is an improvement on all previous proposals on the subject. Partizans of the zemindari party, indeed, assert that, while their rights have been invaded in one direction, nothing has been done to facilitate the recovery of their just rents; but further than bringing to the notice of Government a proposal made in 1876 by Maharaja Sir Jotindra Mohun Tagore to extend the patni procedure to all tenures and tenancies, they have done nothing to suggest a better procedure. The Lieutenant-Governor has given his careful attention to the Maharaja's proposal; and while he is unable to adopt them in their entirety, he is willing, as at present advised, to extend a reasonable modification of the patni sale procedure to tenures of all sorts, which, either through the motion of the owner or the landlord, may be registered in the manner indicated in paragraph 14 above. In this Mr. Rivers Thompson goes somewhat further in the direction desired by the zemindars than section 147 of Sir Ashley Eden's Bill, which limited the summary sale procedure to patnis, to tenures at the creation of which the right to sell was reserved, and to permanent tenures with a rental of Rs. 50 per annum. It remains to be seen whether zemindars, by causing all 'tenures' to be registered, will, in consideration of the more summary procedure for recovering arrears, convert into middlemen those who are now nominally occupancy ryots. If they do, their action will further the Lieutenant-Governor's views regarding the preservation from rack-rents of the actual cultivators of the soil.



But while the Lieutenant-Governor is thus disposed to apply a summary procedure for recovery of rent to all tenures, he is very strongly of the opinion that no such procedure could be safely applied to *ryot* holdings in the possession of actual cultivators. Apart from the reasons which the Rent Commission give\* for refusing to invest inferior landlords with summary powers, Mr. Rivers Thompson believes that it would be a mere mockery of justice to give occupancy *ryots*, sold out of their holdings under a summary procedure, the right to sue for redress. His holding is the occupancy *ryots'* all, and, deprived of this, he becomes a pauper, unable to sue. He becomes an incumbrance on the community which, under the circumstances of the country, cannot provide him with industrial employment, and a source of embarrassment, especially in times of scarcity, to the Government. Nor does the Lieutenant-Governor think that sufficient security against wrong-doing would be afforded by any such arrangements as those contemplated by section 148 of Sir Ashley Eden's Bill. There are many zemindaris in these Provinces in which regular and systematic accounts are now kept; but Mr. Rivers Thompson would hesitate very long indeed, before he would, on that account, vest the proprietors with exceptional privileges in regard to the recovery of rent. When an organized village agency of record and account is established throughout these Provinces or portions of them, things may be different, and then summary facilities for recovering rent from occupancy holdings may properly be granted, which cannot now be allowed without public danger. But for the present, the Lieutenant-Governor thinks that as much as can reasonably be done to facilitate the recovery of arrears from *ryots* has been done by the Bill. Indeed, many experienced officers doubt whether the Bill could, with safety, push simplification further than it has done; and some are disposed to take exception to that portion of section 198 which vests selected munsifs with final jurisdiction in suits when the arrears claimed do not exceed Rs. 50. The Lieutenant-Governor notices that the Rent Commission proposed to confer such summary jurisdiction in munsifs only up to a maximum claim of Rs. 10. It is to be observed that in the great majority of suits for arrears of rent the sum claimed does not exceed Rs. 50; so that in point of fact the practical effect of the section will be to prevent appeals altogether, except in a question of title or rate. The change, therefore, which the Bill proposes to introduce into the present law is a very radical change, and a very great concession to zemindars, which many competent Judges do not contemplate without some doubt as to its expediency. The Lieutenant-Governor, however, thinks that, on the whole, the section may stand, especially as it will be in the discretion of the Government to appoint carefully selected officers for the trial of rent-suits. According to the ancient law of the country, fixity of tenure was conditional on punctual payment of the rent; and when there is no dispute as to title or rate, the decision of a competent and experienced Judge, on an examination of the facts, may be safely allowed to prevail up to the limit stated. If any further concession is to be made, and hardly any seem necessary, it should, in Mr. Rivers Thompson's opinion, take the form of a prohibition of an appeal in suits for arrears of rent from Rs. 50 to Rs. 100 (the limit of the Judge's summary jurisdiction), unless the amount of arrears decreed by the Court of First Instance were previously deposited in Court. It is a common, and a not unreal, complaint with zemindars that their difficulties commence when the decree for arrears has been attained; and to obviate this complaint as far as may be, it might be desirable to limit the right of appeal except under such securities for the final payment of the demand as have been proposed above.

38. In the preceding remarks the Lieutenant-Governor has only touched on the main Conclusion. Lieutenant-Governor's general opinion on the Bill. points of the Bill, postponing matters of detail till the Select Committee meet. He hopes for opportunities from time to time, during the Committee's sessions, to make to it such communications on those points of detail as the progress of the measure may suggest. In bringing his remarks on the present occasion to a close, Mr. Rivers Thompson would again say that, although on some points he has not been able to approve the Bill as drafted, and has felt himself constrained to make suggestions at variance with some of its provisions, he is still bound to repeat that, if modified on those points, the Bill, in his opinion, will be a constitutional and successful effort to remedy abuses which unquestionably exist very widely, and whose continued existence is incompatible with the peace and prosperity of these Provinces.

No. 1021T.-R., dated 1st October, 1883.

From—C. W. BOLTON, Esq., Under Secretary to the Government of Bengal,  
To—The Secretary to the Government of India, Legislative Department,

IN continuation of Mr. MacDonnell's letter No. 973T.-R., dated the 27th September, 1883, I am directed to submit, for the consideration of His Excellency the Governor General in Council, the accompanying copies of the report\* received from the Commissioner of the Rajshahye and Cooch Behar Division on the Bengal Tenancy Bill, 1883.

\* Eighty printed copies of letter No. 610 R. C. T. dated the 22nd September, 1883, with enclosures.

No. 610R.C.T., dated Darjeeling, 22nd September, 1883.

From—**LORD H. ULICK BROWNE**, Commr. of the Rajshahye and Cooch Behar Divn.,

To—The Secretary to the Board of Revenue, Land Revenue Department.

With reference to the Board's circular letter No. 351A., dated 29th March, 1883, I have the honour to report on the Bengal Tenancy Bill.

2. The district officers of Rajshahye and Julpigoree have offered no opinions on the Bill. They seem to have felt hampered by the knowledge that they had already reported on previous Bills, many of the provisions of which are reproduced in the present Bill, and that Government have resolved to pass into law many of those provisions. Mr. Vowell indeed asked me if I could tell him what provisions were still open to consideration and discussion—a question which I was unable to answer. The Deputy Commissioner of Julpigoree also pleaded want of time; but he forwarded a very full report by Baboo Tarruck Nath Mullick, an experienced Deputy Magistrate and Deputy Collector, now in charge as manager of a large Wards' estate. Mr. Vowell has also consulted non-officials in his district, and sent their opinions. Mr. Livesay entirely approves the Bill, and has no remarks to make on it. Mr. Newbery approves of it generally, writing as follows, and adding a few other remarks, which appear in enclosure No. 1 of this letter—

"I have myself gone through the Bill carefully, and, impartially considered, I must say that the Bill is a positive improvement, and it is impossible to make it better under the present state of things, which I admit. As the zemindars urge, the Bill introduces no new measures to remove the extreme difficulty at present felt in realizing the rents, though that was one of the two great necessities which led to the re-casting of the existing law on the subject. At the same time I feel bound to say with the Rent Law Commission that the facilities for realizing rents in Bengal should be sought for, not so much in any positive and new provision of the law, as in the root of the disputes which prevent their punctual and ready payment. Chapter XIV appears to me to have fully taken up the sources of these disputes. Section 47 is, no doubt, in the zemindar's point of view, a very serious alteration, but the difficulties clearly pointed out in paragraphs 28 to 33 of the Objects and Reasons of the Bill cannot be removed without it. It is by far the more desirable to accede to certain concessions in order to gain something than to reserve a right which practically secures no good, but, on the contrary, is a source of endless trouble, uncertainty, and actual loss. The clause (f) at section 50 is only what is practically done and never objected to, except in certain cases which are fully provided by sections 51, 53, and 54, checked by section 56."

Mr. Glazier and Mr. Tate have given opinions of their own and of others which will appear in enclosure No. 1. Mr. Wace has reported very fully on the Bill. I give some extracts from his report in enclosure No. 1 of this letter.

3. I enclose separately a paper marked as enclosure No. 2 of this letter, and desire to specially call the attention of the Board and Government to it. It consists of extracts from Mr. Wace's report, containing remarks of great importance, showing as they do that the provisions of the Bill will have the effect of putting an end to the present custom of making settlements of the Terai jotes, which constitute a Government estate for 10 years. As no contracts will under the Bill prevent the tenant from enjoying all the rights accruing from a right of occupancy, there will be an end of re-settlements, and future rents will be decided by the provisions of the Bill, if passed, for fixing an enhancement of rent.

The foregoing remarks, and what is said in enclosure No. 2 on that point, apply equally to the very similar settlements for 10 years of the Western Dooms of Julpigoree.

4. Before turning from special cases arising in connection with the position of Government as zemindar, I request the Board's attention to the matter of lands granted under the Tea and Arable Leases Rules. It seems doubtful whether under the provisions of the Bill there will be any use in some of our rules for the grant of these two classes of leases, as I understand that there being no freedom of contract, if a grantee has occupied for the requisite number of years, and has held land for 12 years, he will have all the rights of a settled ryot. Of course no such rights can be acquired during the currency of the preliminary lease. Some rather difficult cases will, however, arise, as it sometimes happens that the full percentage of cultivation required by the rules is not effected during the currency of the preliminary lease, and then the grantee is allowed to hold on as a year-to-year tenant, supposing grantees to so hold on without completing the 15 and 50 per cent of cultivation till they had occupied for 12 years, they would under the Bill become settled ryots, and the rules in regard to the grant of a renewed lease and the terms thereof would no longer apply.

5. I do not doubt that, as regards such estates as the Terai jotes and the jotes of the Western Dooms, Government intend to place themselves in the position of all other zemindars, and to deprive themselves of the rights of which other zemindars are deprived. At the same time it will be contrary to public policy in the matter of encouraging cultivators if jotedars of the Western Dooms are allowed to acquire rights and hold for ever any area of waste lands of which they may have been in possession for 12 years. Hitherto Government has exercised its beneficial right to improve its property and encourage cultivation by depriving the jotedar of waste lands in excess of the area which the jotedar is likely to be able to cultivate—as proved by the area found uncultivated at the expiration of each 10 years' settlement, such excess lands being made available for others, both willing and able, to do that. Such judicious measures will be no longer possible under the Bill.

I am not aware whether Government and the Board contemplate that lands granted under the Tea and Arable Lease Rules shall be gradually removed from the operation of these rules, and the terms of the leases by the effluxion of time as a consequence of the present Bill. I have now drawn the attention of the Board to the subject, and it rests for them to bring it

to the notice of Government, in case there should be any desire to treat lands granted under the rules referred to in an exceptional manner.

6. It is scarcely necessary to say that the zemindars of the permanent settlement are (probably without any single exception) much opposed to the most important provisions of the Bill, which proposes to deprive them of so much and confer so much on their ryots.

What Mr. Newbery says in the following passage, as being the view of the zemindars of Rungpore, may be taken as representing the views of all the zemindars in the division, except Government, who are doubtless ready to make sacrifices in regard to public property in order to benefit all the ryots in the country :—

"All the principal resident zemindars of this district, who has given their opinions on the Bill, are unanimously against it as being unnecessary and full of measures which are not only subversive of their rights which the Government has bound itself at the permanent settlement never to disturb, but are also calculated to generate greater ill feeling between the ryots and the zemindars. Further, that courts having been made to come between them in almost every point of difference, the result would be, they say, that the ryots will be found practically to lose more than to gain by the Bill. They strongly object also to the new rights proposed to be created by section 47, and clause f, sections 50 and 56. They further urge that the Bill proposes no better means of recovering the arrears."

Lastly, the public prints have for some months past contained reports of special meetings held by zemindars to express their strong disapproval of the most important portions of the Bill.

7. The zemindars, as a body, also complain that the Bill contains no provisions for enabling them to recover their rents easily and quickly, and specially rents demanded by them at the same rates, &c., as have been paid in for former years, notwithstanding that in 1877 their claim to such an improvement of the Rent Law was admitted by Government.

8. I now proceed to give my own opinion on the Bill.

9. The most important provisions in the Bill are those which confer valuable rights and privileges on the ryots, generally at the expense of the zemindar, whose full proprietary rights will be curtailed, whose income will be restricted, and whose estates will, I think, fall in market value accordingly. It seems to me that the right to ask what price you like for your own property, whether it be land or a horse, or anything else, is a valuable proprietary right which will be abolished by the Bill, and that to give an ordinary ryot a right to occupy land as long as he pays his rent, and unless he misuses the land or violates a special condition, and to limit the rent he is to pay, is to really make him proprietor in a lesser degree. The present Prime Minister of England, and I believe all the leading statesmen at home, have stated in Parliament that provisions of a somewhat similar nature in the two Irish land laws introduced by Mr. Gladstone confer a proprietary interest in land on the tenants. In short, the Bill proposes to effect a violent revolution in the ownership of landed property, and to change the landed system over a large and important tract of country, affecting one way or other the interests of above 55 millions of people. The magnitude and importance of the measure can hardly be overrated.

10. I think that such important changes, affecting detrimentally the rights and interests of a large and important class in a vast country, should only be made on very strong grounds, such as, for instance, the grounds advanced by Mr. Gladstone when introducing a somewhat similar measure for Ireland in 1870, and again, more recently, when he supported his proposals by urging that as good general laws and administration and assistance in the reclamation of waste lands had failed to dispel serious ill-feeling among the mass of the population of Ireland towards England and the Government of the United Kingdom, it was necessary to take an extreme step in a direction specially acceptable to that population in the hope that it would put an end to what was always a serious political danger. The result of such a measure as this in that case might well make thinking men pause before introducing it into another country, even if the circumstances under which the Irish measure was applied existed here. In Ireland the people were finally convinced that the action of Government originated in fear and weakness, and those who had previously paid the rent and lived quietly were persuaded that, if they resorted to greater and greater outrages, the English Government would give them more and more. As a consequence, concession made at the expense of the landlord was followed by further outrages till Government saw that vigorous repression and the suspension of constitutional liberties must take the place of concession. Thus, the result of a similar measure in Ireland was almost disastrous, but it was tried to meet circumstances which seemed to the Government to require special treatment.

11. What are the circumstances under which it is proposed to introduce the present measure? They are about as different to those found in Ireland as it is possible to conceive. No special and strong grounds, political or other, exist in the present case, nor have any been asserted in support of this Bill. Even the Rent Law Commission, the majority of whom proposed a measure similar to this one in its main features, made no such assertion, but, on the contrary, seem from a passage in the report to have been unanimous in holding what is a nearly universal opinion, viz., that the ryots of Bengal Proper are stronger than the zemindars. This will scarcely be disputed by those who have had opportunities of forming an opinion on the point, and it is pretty well known that in Eastern Bengal the ryots are very much the stronger, and that if protection or assistance is required there it is required by the zemindar.

That the ryots of Bengal have been the stronger, and have not been in need of protection or assistance, is further established by the history of the legislation and the attempt at it



which preceded the first of what may fairly be called the revolutionary Bills, viz., that proposed by a majority of the Rent Law Commission. In 1876, the then Lieutenant-Governor effected the passing of the Agrarian Disputes Acts of that year on a consideration of the disputes in Pūbna arising from quarrels between sharholder zemindars. Most Government officers were, I believe, of opinion that nothing but the provision to be found in the present Bill for the appointment of a joint rent collector or manager was needed to meet such cases, but my object in mentioning the Act is to observe that, on that occasion, the Lieutenant-Governor never proposed such changes as are to be found in this Bill.

In 1877, again, so far from any measure to assist the ryots being thought necessary or advisable, another Lieutenant-Governor thought special legislation necessary to assist the zemindars all over the Lieutenant-Governorship of Bengal, i.e., to enable them to recover their rents in cases where there was no dispute, and where the amount claimed was the same as had been paid at the same rate in previous years, combinations among some ryots and a general disinclination to meet their undisputed liabilities among the rest having called for such legislation in aid of the weaker party,—the zemindars. The Government of India concurred with the Lieutenant-Governor, and leave was given to introduce the Bill, though unfortunately for the zemindars that was never done. Matters have in no way changed since then. There has been no general feeling of discontent among the ryots of the country as a body. I am sure that all Government officers will agree in this, and in thinking that the ryots of Bengal are, as a body, in a contented prosperous condition, nor will it be denied that there has been no general request on the part of the ryots for such legislation as is now proposed. As a body, they know nothing of the intentions of Government, and have never asked for what is now to be given to them at a great cost to the zemindars.

12. It is clear then that the present measure is proposed, not because it is necessary, but because, in the opinion of Government, the land system of the Bill is preferable to the existing one. It seems to me that the passing of such a Bill would not be justified by the circumstances under which it is proposed, and that if there were no other objections it would not be right to pass it.

13. But there are other and, in my opinion, serious objections to the Bill. There is first the one, argued so universally and so strongly by the zemindars, that it is an infringement of the rights guaranteed to them by the Permanent Settlement.

The representations of the zemindars on this point seem to me to be most reasonable and entitled to the fullest consideration. I have always thought that the quotations from the writings of Mr. Francis, Sir John Shore, Lord Cornwallis, &c., as to whether zemindars had proprietary rights or not before the Permanent Settlement, which quotations have been so often brought forward by both sides when discussing the question of the infringement of the Permanent Settlement by the passing of Act X of 1859, and such Bills as this one, are not really much to the point, as the case of the zemindars rests on a much stronger ground, viz., the declaration in the Permanent Settlement Regulation that they are proprietors of their estates. That the Bill takes away some of the most important proprietary rights is not, I believe, denied by any but a very few supporters of the Bill. The Hon'ble Mr. Ilbert, in a debate in the Legislative Council, gave, it is true, a new interpretation to the word "proprietor," but I do not think that has been adopted by other members of the Government; and being opposed to the ordinary use of the word "proprietor" in the English language, to the use of it as construed by our Government here and our Regulations and Acts for ninety years, it is unlikely to be adopted, especially as (see paragraph 9 of this letter) the leading statesmen as home hold that such measures as are proposed in the Bill deprive landlords of proprietary right and confer them on tenants.

The zemindars do not stand alone in thinking that Act X of 1859 and such Bills as this are breaches of the conditions of the permanent settlement. The English Barrister-Judges of the High Court, and especially the Chief Justices—men accustomed to interpret laws—have, I believe, almost without exception, held the same view, and it is on record that Sir Barnes Peacock, the Chief Justice of the year when Act X of 1859 was passed, and the present Chief Justice, are entirely in accord on that question.

I do not deny that on grave grounds of public necessity, such as apprehensions of general disturbances, it may be necessary to depart from even such engagements as the Permanent Settlement, but no one says they exist in the present case. Nor do I forget that the Permanent Settlement allows Government to interfere for the welfare and protection of the ryot. But if it had been intended that such interference could amount to the destruction of the proprietary rights then conferred, such rights would never have been conferred; and then I request reference to paragraph 11 of this letter, as it can scarcely be alleged that interference is necessary in the very slightest degree for the protection of the ryots, who are in Bengal Proper stronger than the zemindars, and in part of it very much stronger.

14. Next, we have for ninety years treated the zemindars as real proprietors, making them discharge the duties of proprietors as regards matters connected with police, crime, furnishing supplies to troops on the march, and, above all, the collection of public demands. Is it fair or just to now deprive them of several of the most important rights of a proprietor?

15. In what I have said in this letter as to the ryots being stronger than the zamindars, as to the former not requiring assistance against the latter, and as to the latter (as admitted by the Governments of Bengal and India in 1877) requiring assistance against the former, I have had principally in view the ryots of Bengal Proper. I know that in Behar the zamindars

dars are, generally speaking, the stronger, but if any measures nearly approaching those in the Bill had been necessary in that province, some measure or other would assuredly have been proposed by Sir Richard Temple or Sir Ashley Eden in 1876 and 1877 to assist the ryots of Behar, who have not asked for this Bill any more than have the ryots of Bengal. It seems to me, too, from what has been written by officers of experience in that province, that there are at any rate no grounds for proposing such drastic measures in Behar, and, considering the way in which it affects the zamindars, I think Government are bound to first try very much more moderate measures even than are now contemplated there as elsewhere.

16. Another objection is that it is a serious thing to create among the nobility and gentry of a population of 55 millions a feeling that Government have injured such an important class, and that without nearly sufficient cause, and without any demand for it on the part of the classes for whose sake the injury is done.

17. Another objection is the possibly disturbing effect the Bill might have on the ryots throughout the country. Though happily they are of a very different mould to the Irish, still when the ryots of Bengal and Behar see that without any general representation on their part—without, so far as they know, any reason at all for the action of Government—the zamindars are deprived of rights, while others are at the same time conferred on the ryots, I think it very possible that the idea may occur to the latter that, as they have got so much without asking for it, Government must be actuated by a great desire to please them and to injure the zamindars, who are sacrificed for their sake, and that by agitation further concessions may be obtained. Such an agitation might before long grow and gain strength till it became a source of much trouble to Government.

18. For these reasons I am opposed to the most important provisions of the Bill, and think none of them should be applied to Bengal Proper. In Behar I would introduce but one of them, viz. the provision enabling a ryot to gain a right of occupancy in land in a village, even though he may not have occupied exactly the same land for 12 years. This might be enacted on a consideration of the ryots of Behar really needing protection against the zamindars, because the latter have been in the habit of changing the lands to prevent the former acquiring a right of occupancy, and because the general condition of the Behar ryots is such as to call for a special measure. But, while doing this, provisions for facilitating the recovery of rent should at the same time be enacted.

19. The following are the principal provisions of the Bill to which I have referred and objected in the foregoing paragraphs.

The general effect of chapter III, which will prevent any zamindar from utilising in the future any of his land as khamar land when once a register of such land has been prepared. He cannot so use land that may hereafter be deserted by a ryot, and to which no one but the zamindar will then have any claim, and he cannot even so use waste land which is his own property, and to which no one else has probably even at any time advanced a claim or an interest. I think such restrictions unjust. The provisions of sections 21 to 21 in regard to the profits of tenures and the enhancement of the rents of the same. In chapter V the provisions of section 49, allowing a ryot to acquire a right of occupancy in khamar land; of 50, taking away the right of contract in some matters, not allowing ejectment for non-payment of rent when due, allowing sub-letting without the zamindar's consent, making occupancy tenures transferable and heritable by the ryot; and of section 56, depriving the zamindar of the power of holding a right of occupancy, even when he has bought it, if he lets the land out again. In chapter VI the provisions of sections 59 and 61, not allowing the registration of a contract involving the payment of enhanced rent above a certain limit, even when a ryot is ready to pay a higher rent of 75 (d), 76, 77, 78 limiting the enhanced rent and prohibiting a further enhancement within 10 years. Though it may be clearly proved (as in cases within my knowledge) that the productive and market-value of land has increased fourfold, and from causes entirely unconnected with any action on the part of the ryot, the zamindar may not get a corresponding share or increase of rent; and if the increased value goes on increasing, he may not get any increase of rent at all for another 10 years. The provision of section 81 limiting the rent payable in kind of 85 and 86. In chapter VIII the sections depriving a zamindar of the power to eject an ordinary ryot, except on special grounds, and giving such a ryot ten times the amount of the increase of rent demanded in case of ejectment from land which he has no right to occupy, and the rent fixed on which he is unwilling to pay. In chapter IX, section 119, limiting the rent of an ordinary ryot. In chapter X the provisions of section 133 not allowing a zamindar to measure ryots' lands again for 10 years, even though in the first year a ryot may have occupied and included in his holding any quantity of additional land.

20. Apart from the great question of principle involved in the revolutionary portions of the Bill, it seems to me to have been framed with most unnecessary unfairness to zamindars. There is, so to speak, no reciprocity, and provisions in favour of the zamindar, which suggest themselves as a natural corollary to corresponding provisions for the benefit of the ryots, are not to be found. For instance, though an occupancy ryot is to be allowed to sell or bequeath his holding, the zamindar is not allowed to sell it summarily for non-payment of rent, but must go into court and get a decree first. The boon to the ryot is a great one, and a great pecuniary loss to the zamindar. He would probably, however, consent to it if at the same time he were allowed to have all such tenures registered and made saleable like patni tenures. In the case of an occupancy holding paying rent to the zamindar while the ryot and most of their people

may hold a right of occupancy, there is one person in the world, and only one, who is prohibited from holding such a right as long as he likes, and that is the *proprietor* of the land, who is not allowed this even if he purchases the occupancy right from a ryot, if the zamindar subsequently allows another ryot to occupy it for 12 years.

21. The following provisions of the Bill will be decidedly beneficial, and I approve of them. Section 27 about registration of transfers of permanent tenures; chapter IV about patni tenures; section 83 about the Collector preparing lists of market prices; sections 97 to 99 about instalments of rent; sections 100 and 101 prescribing forms of rent receipts; section 138 about the Collector deciding the standards of local measurement; sections 142, &c., about the appointment of managers or rent-receivers in cases of disputes between shareholding zamindars; and most of the provisions of chapter XIV in regard to procedure in suits.

22. Referring to section 109, I think combinations not to pay rents, even when the rents asked are at the admitted rate, &c., of previous years, should be checked by making it compulsory on the court to award 25 per cent. damages in addition to 12 per cent. interest.

I do not think the plan of a table of rates will work, except in a few places, and I understand it has failed, in so far as the enquiries made by special officers during last cold season enabled Government and the Board to form an opinion about it. When a special officer was appointed in the Government estates in Bogra, and I saw a copy of the instructions he had received, I told Mr. Dampier I was sure it would not work in my division, as the rents paid in this and that estate for this and that class of land are not fixed on any principle which would afford a basis to work on, and so it turned out.

Section 151 (2) (a).—I would not allow this unless both parties assent to it; and the same as regards the similar case under section 161 (2) (a).

I think the provisions not to alter rents within 10 years, regardless of any improvement in the land, irrespective of the ryots' action, very objectionable, and the same as regards section 133 about the zamindar's right to measure land which may have been increased considerably by the ryots' encroachment.

23. In conclusion, I hope that, after all that was said and done in 1877, and the unchanged circumstances since then, a provision will be made in the Bill for the recovery of undisputed rents at the rates paid in former years. It seems to me very unjust to omit such a provision in favour of the zamindar from a Bill which proposes to deprive him of so much, and to do so much in favour of the ryots. In 1877 the zamindar asked for a bread; his claim to it was admitted by the Governments of Bengal and India; and in 1883 he is refused a crumb and given a very large stone. I believe my recollection is correct when I say that some Government officers who have warmly advocated the revolutionary Bills (Messrs. Reynolds and Mackenzie, for instance) warmly advocated in 1877 and 1878, or 1879 (Mr. Mackenzie in the Bengal Legislative Council) such relief as I now recommend to the zamindars, and it is not easy to understand how it can on any principle of justice be now refused. Though the Bill that was approved of in 1877 would be very beneficial, the measure I recommend is that the registration of occupancy tenures be made compulsory, and the tenures made saleable like putnee tenures. This is a simple and easy remedy, and would, I think, be very acceptable to the zamindars.

#### ENCLOSURE No. 1. KHAMAR LANDS.

##### CHAPTER II.

*Pubna*.—The pleaders object to the limitation of the zamindar's khamar lands.

*Bogra*.—It is the opinion of zamindar Abdoos Soobhan Chowdhree that waste lands and lands under water should be classed with khamar lands.

*Jalpiore*.—Baboo Taruck Nath Mullick (an experienced Deputy Magistrate and Manager of a large estate under the Court of Wards) does not consider the provisions of this Chapter objectionable, though its preparation in the first instance might lead to litigation.

*Darjeeling*.—Mr. Wace approves of the principle which underlies the provision of Chapter II, by which the proprietors would be prevented from increasing the stock of khamar lands, but he thinks that it would work hardly against petty proprietors and lakhrajars, and he would be glad to have it so altered as to protect them.

Section 22.—Baboo Taruck Nath Mullick thinks that the provision of this section would prove prejudicial to the interests of the zamindar. He knows of many cases in which the tenure-holders by gradual encroachment on khamar or other untenanted lands became possessed of more than three or four times the quantity of land originally comprised in their tenures. In such cases it would be very unfair if the landlord were not allowed to assess the whole quantity of land found on measurement in the possession of the tenure-holders, and thus increase their rents to three or four times the amounts they used to pay.

*Pubna*.—The pleaders of Pubna also disapprove the provision that enhanced rent should not be more than double the previous rent.

##### Registration of transfers of occupancy rights.

*Dinapore*.—The Sub-Judge of Dinapore suggests that transfer of occupancy rights should be registered under the same provision as laid down in sub-division D, Chapter III, for the registration of permanent tenures. The Collector does not approve of this suggestion, as he apprehends that such a provision would give the zamindars an opportunity to extort money (salamee) from the ryots.

*Bogra*.—Abdoos Soobhan Chowdhree, zamindar, is of opinion that provision should be made for the registration of transfers of jotes, otherwise when a dispute will arise in regard to the tenancy of a jote, the landlord will have to wait for rent till the matter is decided by the court.

*Darjeeling*.—Mr. Wace holds that the system of registration should not be extended to occupancy ryots. He does not also approve of the alternative procedure in sections 27 and 28. If the application is to be made to the revenue officer, let him have the power enforcing his order, or section 28 might be omitted altogether. In that case the transferee would apply direct to the landlord, and on his refusal, go direct to the civil court.



*Contracts between Landlords and Tenants—Sections 45, 47, 59 (2), 82, 85, and 98.*

*Bogra.*—The zemindars are of opinion that it is unfair that all existing contracts between landlords and tenants should become null and void after the Bill is passed.

*Rungpore.*—Mr. Newbery says—

"I do not clearly understand the real purport of section 82. If it means that when the rent in kind is commuted to a money rent by an occupancy ryot, his rent is a fixed money rent, and must be paid every year, whether the land is cultivated or not, in the same way as the ryot mentioned in section 50 do, then I consider the meaning of this section ought to be made clearer by adding a few lines to the end of it to bring these cases clearly under the operation of section 59, clause 2. The clauses 2—b and 3 read with the immediately preceding section 81 seems not to distinctly say that the money rent in such cases cannot be fixed independent of any contract more than one-fifth of the gross annual produce. If, however, these ryots are not considered when his rent is so commuted to be exactly on the footing of the ryots mentioned in section 50, I do not see the reason of such consideration, because both of them are occupant ryots with fixed rents."

*Julpigora.*—Baboo Taruck Nath Mullick is also of the same opinion. He thinks it would be unfair not to allow the landlord to enter into contract with the tenant, and to increase rent by private arrangements to any amount without limit. The Bill makes void all engagements which militates against the ryots' interests, but not those which are prejudicial to the landlords, although in both cases the contract might have been made in good faith.

*Darjeeling.*—Section 82. Mr. Wace would not give the court a discretion. He says:—"The two rules would undoubtedly give widely differing results, and the result would be inequality of treatment that would cause trouble. I prefer the second of the two methods as involving the small departure from existing relations between the parties."

*Transferability of Occupancy Rights—Chapter V, Sections 43 to 57.*

*Dinagore.*—The zamindars do not at all approve of these sections, on the grounds (1) that they would bring in the mahajans as middlemen; (2) that they would give facility to hostile zemindars to settle on their neighbours' lands; and (3) that ryots might combine to force the landlord to exercise the right of pre-emption, or let his lands go into the hands of strangers. They think that the ryots should deem it a large concession even if the transfer were limited to inheritance and bequest.

Mr. Tute's own opinion is that if the right of occupancy is to be recognized at all, it must be made tangible marketable commodity. He approves of the provisions of this chapter. As a protection to the zemindar against the machinations of his enemies, and the combination of the ryots, and to prevent any breach of the peace, he proposes an alteration of clause 2 of section 51, such as would give the zemindar an opportunity to prove to the Collector that the sale was intended as a means to annoy him, and the Collector in such a case should have the power to stop the sale.

*Rajshahye.*—Baboo Hara Gobind Sen, Professor, Rajshahye College, thinks that the restrictions on the transferability of occupancy rights in sections 51 to 54 would lessen the value of the right, and prevent the ryots from improving the land. The Collector agrees in this opinion, and thinks that such transfers should be quite free, subject only to registration in the landlord's *sherista*.

*Bogra.*—The zemindars are of opinion that the consequence of the provision of section 51 would be that money-lenders and rich zemindars would manage to have the rights of all occupancy ryots transferred to them, and the money-lenders would be the *de facto* proprietors of the soil.

The Collector himself is in favour of the Bill, and has no suggestions to make.

*Julpigorie.*—Baboo Taruck Nath Mullick thinks that the provisions in Chapter V would unfairly create rights to the prejudice of the landlords, and would virtually reduce them to mere annuitants. The exercise of occupancy rights would give rise to constant litigation.

*Darjeeling.*—Mr. Wace says:—

"Reading sections 51, 52, 53, and 55 with section 56, a landlord may well exclaim '*timeo Danos et dona ferentes*.' Having regard to the provisions of Chapter II, by which the increase of khamar land is limited, I do not think section 56 either fair or expedient. If an occupancy right falls in any of the ways mentioned in sections 51-55, I really cannot see why a landlord should not have the power to re-let it without creating '*ipso facto*' another such right. It is surely sufficient that he should be barred under section 45 from stipulating against an accrual of that right. If, however, the legislature will not accept this view, it might at least insert the words 'being a settled ryot in respect of other land in the village' after the word 'person' in section 56. There would be some reason in this, but why should an outsider suddenly step into occupancy right simply because another man with whom he has no concern had those rights. These petty interferences with the powers of landlords seem to me to discredit our section with the zemindar class, and to challenge their opposition without in any way helping the class in whose interests we are professedly legislating."

*Preparation of Table of Rates—Chapter VI, Sections 62 to 72.*

*Julpigoree.*—Baboo T. N. Mullick. The power of Government to direct the preparation of Table of Rates of Rent should be limited to cases in which the landlord or the ryots apply for it.

*Darjeeling.*—The provisions of section 72 are not very fair; for why should the people of a local area dealt with under division B pay heavier for the decision of their cases than those dealt with under division C? Government should bear all expenses incurred in the preparation of tables.

*Section 73.*—*Darjeeling.*—Mr. Wace says:—

"In the second proviso of section 73, I would omit the words 'or on some equitable ground' unless a corresponding proviso is inserted in favour of the landlord. It is conceivable that a ryot, performing certain duties, may by contract or custom be entitled to hold at a rate lower than the rate of the table, but the words I have proposed to omit seem to me too general, and likely to raise questions at any time, which may make the Table of Rates utterly useless. Baboo Taruck Nath Mullick thinks section 73 is not open to objection."

*Bastu land—Sections 85 to 87.*

*Pubna.*—The pleaders approve of the provisions.

*Bogra.*—Abdoos Soobhan Chowdree is of opinion that the acquisition of occupancy right in homestead lands is a new encroachment on the interests of the landlord.

*Julpigoree.*—Baboo Taruck Nath Mullick. These sections protect the ryots' interests, but not those of the landlord. It would be unfair to the latter if he were to maintain a person who was at one time a settled ryot in possession of his bastu lands, after he has ceased to be such a ryot.

*Enhancement of Rent—Chapter VI, sections 95 (2), 61 (2), and 75 (d); Chapter VIII, section 91, and Chapter IX, section 119.*

*Pubna.*—Mr. Glazier objects to the maximum rates fixed in the Bill, *viz.*, one-fifth of the value of gross produce for occupancy and five-sixteenths for ordinary ryots. In the Serajgunge Sub-division hardly any one

pays more than one-eighth, and the majority probably one twelfth. He proposes a lower rate, viz., one-fourth to one-fifth for non-occupancy, and one-sixth to one-twelfth for occupancy ryots, according to the discretion of the authority deciding the case. He thinks suits for enhancement of rent should be tried by the revenue courts.

*Rajshahye.*—Baboo Loke Nath Chuckerbutty, a teacher, points out this anomaly in the provisions of the Bill. Suppose the rent of an ordinary ryot is enhanced to the maximum rate provided in the Bill, namely, five-sixteenths of the value of the produce. He continues to hold the land for upwards of 12 years, and acquires a right of occupancy, would he continue paying the five-sixteenths rate? The Baboo considers the five-sixteenths rate too high.

*Bogra.*—Abdoo Sobhan Chowdree, zemindar, thinks that an occupancy ryot would gain too much advantage by being allowed to sub-let at so much profit, himself paying one-fifth and realizing five sixteenths of the value of gross produce from the sub-tenants.

*Rungpore.*—Some propose that the maximum rate of rent for occupancy ryots should be increased from one-fifth to one-fourth of the value of produce, but the Collector, Mr. Newbery, does not agree with them. As regards the other class of ryots, he is of opinion that their maximum rate should not also be more than five-sixteenths or 30 per cent. of the value of produce.

*Julpigoree.*—Baboo Taruck Nath Mullick thinks that the restrictions under which the rent of an ordinary ryot is enhanceable and the limit are unfair to the landlord.

*Darjeeling.*—Mr. Wace thinks the one-fourth limit originally proposed was fairer than the one-fifth mentioned in sections 59 and 75. Section 76 would prevent the higher limit working oppressively.

#### Ordinary Ryots—Chapter VIII, sections 88 to 95.

*Dinagore.*—Mr. Tate strongly objects to the principle which underlies the provision of section 93, which he thinks has been borrowed from the Irish Land Bill. It would simply be the deliberate creation of a right which has hitherto never existed, and which would deprive the landlord of a part of his property.

*Rajshahye.*—According to Baboo Loke Nath Chuckerbutty, ten times the yearly increase provided in section 93 (b) as compensation is exorbitant.

*Pubna.*—The Collector quite approves of the provision about compensation for ejectment, as he thinks a reasonable amount of protection should be afforded to every class of ryot. It is not clear whether an under-tenant can under the Bill acquire rights of occupancy but it is desirable that he should.

*Bogra.*—Abdoo Sobhan Chowdree thinks that sub-tenants should be permitted to acquire occupancy rights which he might enjoy as long as the superior tenant retained the same.

*Julpigoree.*—Baboo Taruck Nath Mullick thinks sections 88 to 95 would injuriously affect the interests of the landlord.

*Darjeeling.*—Mr. Wace says:—

#### CHAPTER VIII.

Seems to me unduly hard on the landlord in two respects. Section 93 (b) provides for compensation for disturbance amounting to ten times the yearly increase of rent demanded. I think this should be the maximum, and that it should be at the discretion of the court to award less, the guide being the number of years that the ordinary ryot has held the land. I do not see why a man, who has held land for two years only, should get the same compensation as a man who has held it for eight. Then in section 95 it seems to me hard that because a decree becomes void under section 94, the landlord should be barred from all enhancements for ten years. That he should be barred for that time, if he gets his claim, is fair enough, but circumstances might prevent him from paying the compensation awarded under section 93 within the very short time fixed, and a failure to do so should not, I think, tie his hands for longer than five years at the outside."

#### CHAPTER IX.

*Chapter IXc, section 100 (4) and section 102 (1).*—The double penalty seems to me unnecessarily severe. If the payment, for which an informal receipt is given, did not clear the ryot to the date thereof, the landlord forfeits by reason of the informality all balances really due in excess thereof. This is surely quite sufficient without a fine. If the payment really cleared all dues to date, the informality does not matter to the ryot, because he can at the end of the year get a statement of account, and recover a penalty under 102 (2) for refusal thereof. Anyhow might not the loss of real dues entailed by section 100 (4) be deducted from the penalty under section 102 (1), if it is considered necessary to maintain both provisions. It should be remembered that a landlord has often careless and occasionally disaffected servants. Imagine the trouble a gomastha, who was to be turned out at the end of the year, might bring on his master under these sections without any fault of the latter. Surely some provision should be added to provide for such cases. The power to recover damages in the Civil Court from such a servant would be a poor remedy."

#### CHAPTER IXD.

I hope Government is prepared either to increase the establishments of all revenue officers and treasuries, as a result of the extension of the power to deposit or to create new offices for the purposes of dealing with the applications which will be made. There can be little doubt that the rush on the public offices, whatever they may be, will be great; and I would advise that, as some sort of check, section 107 be expunged. A tenant is not likely to pay anything, unless he knows it to be due to somebody; why then should he get it back at the end of three years. If it were allowed to lapse to Government after that period, the receipts might go towards covering part of the expenditure, to which Government will undoubtedly be committed by these provisions in the tenants' favour.

#### CHAPTER IXE.

*Section 109.*—I would add at end of the proviso "on such damages." I do not see why a landlord should not be allowed from a really recalcitrant tenant both interest on his dues and damages.

*Julpigoree.*—Baboo Taruck Nath Mullick says section 102 (1) is a re-enactment of the existing law on the subject, and sub-sections 2 and 3, though new, are not open to any grave objection, sections 103 to 107 are generally fair, and require no modifications.

*Rungpore.*—Mr. Newbery would distinctly insert the fee "khurrutcha" in section 123, instead of including it in the words "other like appellations."

#### Improvements on ryots' holdings, and compensation therefor—Chapter X, sections 126 to 132.

*Bogra.*—Abdoo Sobhan Chowdree considers the provision of section 129 objectionable, inasmuch as it makes the landlord liable to pay compensation even if the tenant is ousted for wilful non-payment of rent.

*Julpigoree.*—Baboo Taruck Nath Mullick does not see anything objectionable in these sections.

*Darjeeling*—Mr. Wace says:—

“CHAPTER XA.

“The provisions seem to me judicious and fair but, with reference to section 126, sub-section (2) is not, I suppose, meant to be exhaustive? It includes what is mentioned, but does not, I presume, exclude such improvements as the planting of fruit trees, bamboos, &c.”

CHAPTER XB.

I do not see that the power to measure rent-free land, which paragraph 92 of the statements says it is intended to give, accrues on the section as worded. The “which” therein might as well apply to the “lands” as to the “estate” or “tenure.”

*The Procedure for the recovery of rent—Chapter XIII.*

*Dinapore.*—There should be some summary procedure to enable the zemindars to realize rents from the ryots. It is also desirable, in view of the very long time which a civil court takes to dispose of a rent suit, to revert to the old procedure under which revenue officers could decide simple rent-suits, and they are more competent for it than moonsills.

*Bogra.*—Radha Raman Moonshee, zemindar, thinks that there should be some easier means for the landlord to realize the rent from the tenants.

*Julpigorce.*—Baboo Tarnak Nath Mullick is of opinion that the provisions of Chapter XIII are decided improvement on the existing law on the subject, and they would prevent an unscrupulous landlord from harassing his ryots.

*Pubna.*—The pleaders object to the restrictions on distraint, paragraph 3 (6).

*Darjeeling.*—The provision of Chapter XIII is a judicious compromise between contending parties, but it would be better if applications for distraint were made to revenue officers whose proceedings are prompter than these of the civil courts.

ENCLOSURE No. 2.

There is one point in which the bearing of this Act on the Hill Tract, should it be extended to Darjeeling under the Scheduled Districts Act, has to be considered. You are aware that a portion of most tea estates is cultivated with native crops by the labourers of the estate, no rent is charged for the little plots these men hold. The plots really represent part of the wages of labour. There is, however, no doubt that on the older tea gardens there are many men who have cultivated land for 12 years or more thereon. I presume that in the land allotted to labourers under these circumstances, no rights of occupancy could accrue, and that the holding of the labourer would not be considered the holding of a raiyat under section 45 (1). I state the case, because there is no definition of a “raiyat” in the Act, though I presume that payment of rent is necessary to constitute such a relation, and because the land I have described scarcely falls within the definition of “khamar land” as given in section 5, and section 6 declares that all land, not khamar, shall be deemed “raiyati.” The tenure described might perhaps be brought within the scope of section 4 (9) as a service-tenure, and thus be unaffected by the Act; but I would draw your attention to the definition of the word “tenure” in section 3 (3), and would suggest the addition of the word “tenancy” in section 4 (9). Tenancy meaning the holding of a “tenant” [section 3 (8)].

6. Considering now the Act with reference to that tract which it will chiefly affect, viz., the Terai, I have to make the following observations—Chapter I. It seems to me that, as it stands, it will work a revolution there in one respect: our jotedars will, on the wording of section 3, become “proprietors”; each of the Terai jotes is entered in the registers maintained under Act VII of 1876 (B.C.) I may state briefly the history of this proceeding. Mr. Edgar, in this office No. 324, dated 24th November 1876, with reference to the introduction of that Act, remarked—“It appears clear that the Terai jotes are revenue-paying estates.” You stated the case to the Board in your No. 788, dated 28th February 1877, giving it as your opinion that “all these tenures in Government tracts of land held khas should be treated as tenures.” The Board accepted this view in their No. 703A, dated 16th March 1877, and declared that “the Terai jotes should not be registered under any circumstances as estates.” Mr. Edgar then recommended that, though recognised as “tenures,” they should be dealt with under clause c, paragraph 2, section 3, of Act VII of 1876 (B.C.) *vide* paragraph 6 of this office No. 185, dated 16th June 1877. You supported this suggestion, and the Board in their No. 287A, dated 7th July 1877, ruled that the 808 jotes of the Terai should be “dealt with under clause c, paragraph 2, section 3, each jote being treated as a separate Government estate, and entered in Register A.” As the definitions, therefore, now stand in section 3 of the Draft Act, our jotedars are “proprietors,” for, according to the definition of their rights in the Terai pottah, they seem to me to “own” their jotes.

7. Now so far as their relations with Government are concerned, the Act will make no difference. Section 4 saves “enactments regulating procedure for realization of rents in estates belonging to Government.” It is in the position of their sub-tenants that the alteration of their status involved in the definition alluded to would make the difference. Their sub-tenants are known by the names of “ticcadars” or “mallandars” and “adhya-dars.” The ticcadar tenure of the Terai must not be confounded with that of Behar and the rest of Bengal. The ticcadar is really an “under-raiyat,” the “kurfa” of the greater part of Bengal. The “adhyadar” gets a share of the crop, generally half of it, in consideration of his labour throughout the year. He is practically a farm labourer, the jotedar supplying seed, cattle, and implements.

8. If our jotedars are raiyats, their ticcadars cannot be recognized, either at once or hereafter, as occupancy or settled raiyats, for they will fall within the definition of “under-raiyat,” and there is no such established custom as would give them as such a right of occupancy under section 4(a), and the illustration attached thereto. On the other hand, if the Act stands as it is, our jotedars become “proprietors,” and the majority of their ticcadars will become occupancy or settled raiyats.

9. If it should not be the intention of Government to give our jotedars the position of “proprietors,” then an alteration of section 3 is necessary, so as to make “estate” applicable only to lands registered under clauses a and b of paragraph 2 of section 3 of the Land Registration Act. The question should, to my mind, be decided with reference chiefly to the interest of the under-tenants. Although it has been the fashion in the past to deny that the sub-tenants of Terai jotedars have any occupancy rights, I believe that even under the Acts now in force such rights have been acquired, were this class only in a position to assert them. But anyhow it would be entirely in accordance with the spirit of the new Act to recognize the majority of these men as settled ryots. Let us then by all means call our jotedars proprietors, if this is the only way of making their subordinates “raiyats.” If, however, it can be held on the Act as worded, or as it may be altered, that the jotedar is a “tenure-holder,” and that his ticcadar may be a raiyat under him, I think it would be more consistent with the history of the registration of jotes, as stated above, and with actual facts, to call the jotedars “tenure-holders,” and to make the alteration in the definition of “estate,” which I have suggested.



10. It will perhaps facilitate the settlement of this question, if I give the following particulars as to the position of our jotedars. The settlement papers show them to be 782 in number, and the total assessed area being 123,670 acres. The average size of a jote may be taken as 158 acres. About 163 of the jotes are held by absentees, and these are generally sublet to ticcadars, who again sublet what they cannot cultivate themselves to dur-ticcadars. Few of the resident jotedars are in a position to cultivate the whole of their jotes, and what they cannot manage either by their own or a dhyadar's labours, they sublet to ticcadars.

11. If the jotedar can be held to be a "tenure-holder," perhaps the simplest way out of the difficulty I have exposed would be to add at the end of section 3 (4) the following words:—"The registration of a 'tenure' under clause (c) of paragraph 2 of section 3 of the Land Registration Act VII of 1876 (B.C.) shall not thereby constitute it an estate within the meaning of paragraph (1). Possibly this difficulty may have arisen in other districts with reference to large holdings similar to our Terai jotes. I can, however, only suggest an amendment which will suit the circumstances of this district.

12. Anyhow, it seems to me doubtful whether the bearing of the definitions now given, or the position of kurfa raiyats in Government estates, has been fully considered. There must surely be lands in Julpogoria, Noakholly, and Chittagong, if not elsewhere, held by men of substance, who are above the position of what I presume the Act means by a "raiya," and whose sub-tenants, even if they have not already acquired occupancy rights, should at least now be given the benefit of sections 44 and 45 of the Draft Act. I cannot but think it a mistake that a positive definition of the word "raiya" has not been attempted.

## CHAPTER II.

13. What I have said above as to the Act, as now worded, making the Terai jotedars "proprietors," must be borne in mind also with reference to the definition of "khamar" land. If they do get this status, no occupancy rights are likely to accrue after the passing of this Act in lands to which jotedars now apply their own seed, cattle, and implements, even though the labour by which these are worked be not theirs, but that of adhyadars. This seems to me an additional reason for wording the Act, so as to make them tenure-holders only. I must declare myself in favour of the general principle involved in this chapter, viz., the disability of the proprietor to increase, after the passing of this Act, the existing stock of "khamar" land so far as large proprietors are concerned.

14. The provision, however, would in my opinion work hardly against petty proprietors and lakhrajadars, and I should be glad to see it altered so as to protect them. It must be considered with section 53, and I beg that what I urge against that section may be read with the following remarks. I sympathise with the desire to prevent the unwarranted extension of zeraat lands in Behar beyond what is necessary for the purposes of the "malik," and often entirely in the interests of an indigo planter holding a temporary lease of the village, but I do think it hard that in consequence of the scandals of past years in one division of this province, the hands of poor men in the other divisions should be tied, and their means of subsistence curtailed. The provisions of the law are strong enough to protect a settled and an ordinary ryot from arbitrary ejectment, but if an owner of a small property does in any legal way get possession of "ryoti" land, it would be a grievous hardship to prevent him from doing as he liked with it. He might be able to make more of it by cultivating it himself than by letting it, especially if the letting could only be on the terms of section 56. No one with any knowledge of mofussil life will deny that among the class of proprietors, as defined in section 3, there are numerous persons whose circumstances are harder than many of the raiyat class in whose interests these sweeping proposals are made, and to sacrifice them on account of the grasping propensities of wealthy maliks and planters in Behar would be a gross injustice.

## CHAPTER V.

16. The bearing of the definition of the word "estate" in section 3 on the Terai jotes must be again borne in mind here. If the definition is left as it is, and the "jote" is an "estate," which is to be taken as the area within which the continuous holding of section 45 must take place—the village or the estate? The 782 jotes are comprised within 19 mouzahs, and the average size of a jote is, as I have said, only 158 acres. If the area is taken as the "mouzah," A having held a portion of jote 604 in mouzah T. for continuously for 12 years, may, if he gets a footing as a ryot in jote 605 in the same mouzah next year, set himself up as a settled ryot in jote 605 also. The difficulty remains the same even if the Act is altered, so as to make a jote a tenure, and not an estate. Then the area would clearly be the mouzah, and it seems to me rather hard that, in the case above quoted, A should merely, by reason of his position in jote 604 belonging to B, jump suddenly into the status of a settled ryot. As regards land acquired in jote 605 belonging to C, you may say it is "his own look-out if he lets A into jote 605, so it is; but it seems to me a great mistake to put obstacles in the way of C letting his land to a man like A, who, from his status in jote 604, would probably be an infinitely better tenant and a better subject of Government than the squatter whom C would be compelled to get hold of if he could not let the land to A.

17. This, of course, is one corollary of the words "notwithstanding any contract to the contrary." But for these words C would be able to say to A, "I will let you the land in jote 605, on condition that your status as a settled ryot in jote 604 does not extend to my jote." I entirely sympathise with the object with which these clauses are inserted, as stated in paragraph 33 of the "statement," but, as it stands, it seems to me to go too far. The difficulty might perhaps be surmounted by a proviso to section 45, declaring that the contract alluded to in sub-section shall be a contract between the raiyat and the owner of the village or estate within which the status of a settled raiyat has been acquired, sub-section (b) of section 43 would prevent this proviso working unfavourably against raiyats of an estate which has been partitioned. There must be in every district parallel cases to that now put. For instance, why should Z, who may in respect of the mal land in a mouzah be fairly considered a settled raiyat, assume the same position against X, a lakhrajdar, if the latter thought fit to let to him part of his lakhraj holding. The principle for which I contend is the same as that involved in the proviso of section 57.

## ABSTRACT OF FOREIGN TRAFFIC FOR THE MONTH OF JULY 1883

CLASS OF MESSAGE		ROUTE																TOTAL			
		WEST								EAST											
		VIA TEHRAN		VIA TURKEY		IRANIAN GULF		VIA SUEZ		VIA AMUR		VIA MADRAS		VIA BANGKOK		NATIVE BURMA				CEYLON	
No	Indian Value	No	Indian Value	No	Indian Value	No	Indian Value	No	Indian Value	No	Indian Value	No	Indian Value	No	Indian Value	No	Indian Value	No	Indian Value		
INDIAN																					
Sent		3 206	16 61 11	90	5 1 1	9	78 4	41 1	11 927 7			6 5	11 218 0	4 1	1 140 7	370	574 2	1 569	2 704 16	9 444	47 280 18
Received		1 791	8 69 0	1	1 1	18	1 1 8	3 1	11 916 13	1 1	1	806	1 12 13	463	1 171 4			1 66	2 867 4	7 05	27 534 0
TOTAL		5 997	25 7 11	91	6 1 1	27	79 5	44 2	23 844 10	2	2	1 812	12 330 13	916	2 311 11	370	574 2	1 635	5 571 16	17 395	74 814 18
TRANSIT																					
From East to West—																					
Recd	Via Madras	229	1 824 14	1	1 6	10	24 12	9 694	14 961 6											3 042	16 230 6
	Via Rangoon	61	908 4	1	1 12			1 1	4 140 6											2 213	4 912 8
	Via Ceylon	40	197 4			3	20 1	4 30	1 288 7											473	1 505 14
From West to East—																					
Sent	Via Madras	793	3 504 8	87	13 3	2	12 11	2 597	10 008 0											3 440	13 892 7
	Via Rangoon	178	867 13	41	95 10	1	4 11	89	3 114 1											1 108	4 462 9
	Via Ceylon	94	439 5	1	12 9			2	12 1	1 106 6										313	1 457 4
From West to East—																					
Recd	Via Bombay					4	25 8													8	25 8
	Via Bombay			2	1 8	2	7 13													4	12 6
	Via Ceylon																				
From East to West—																					
Recd	Via Ceylon											41	176 14	13	28 15					64	205 13
	Via Madras																		90	121 9	
	Via Rangoon																		18	73 8	
TOTAL		1 394	7 370 0	13	14 14	27	96 1	8 976	31 60 1			41	176 14	13	28 15			44	195 1	10 829	42 930 12
GRAND TOTAL																				28,024	11,745 11

ABSTRACT OF FOREIGN TRAFFIC WITH INDIA BY THE INDO EUROPEAN AND RED SEA ROUTES FOR THE  
MONTH OF JULY 1883

ROUTE		NUMBER OF MESSAGES BY EACH ROUTE (EXCLUSIVE OF TRANSMIT)			PERCENTAGE OF NUMBER		
		To India	From India	TOTAL	To India	From India	TOTAL
INDO EUROPEAN	Via Tchern	1 791	3 206	4 997	93 70	49 56	42 40
	India	126	19	216	2 37	1 39	1 83
	Indian Gulf via Kurrul	48	20	68	0 90	0 31	0 58
RED SEA	Via Suez	3,300	3,153	6 503	63 03	48 74	55 19
TOTAL		5 315	6 469	11,784	100 00	100 00	100 00





GOVERNMENT OF INDIA,  
DEPARTMENT OF FINANCE AND COMMERCE.

*Comparative Statement of the Nett Indian Sea and Land Customs Revenue (excluding Salt Revenue) for the first six months of the official year 1883-84, and of the twelve preceding years.*  
(IN THOUSANDS OF RUPEES.)

FOR THE SIX MONTHS, APRIL TO SEPTEMBER.																										
YEAR.	BOMBAY.				SINDH.				MADRAS.				BRITISH BUREAU.				TOTAL BRITISH INDIA.				YEAR.					
	On Imports of Liquors.	On other Imports.	On Exports.	Total Revenue.	On Imports of Liquors.	On other Imports.	On Exports.	Total Revenue.	On Imports of Liquors.	On other Imports.	On Exports.	Total Revenue.	On Imports of Liquors.	On other Imports.	On Exports.	Total Revenue.	On Imports of Liquors.	On other Imports.	On Exports.	Total Revenue.						
1871-72 .	5.38	36.54	10.61	52.53	3.81	18.83	1.84	24.48	66	50	68	1.84	1.76	6.22	7.32	15.30	78	2.00	9.51	12.29	54.09	76.48	29.96	1,06.44	1871-72.	
1872-73 .	6.59	36.64	11.34	54.57	2.70	19.48	1.54	23.72	53	49	1.09	2.11	1.94	5.85	5.64	13.43	1.66	2.25	18.00	21.85	64.71	78.07	37.61	1,15.68	1872-73.	
1873-74 .	5.16	32.43	8.39	45.98	2.91	17.90	1.53	22.34	58	33	58	1.49	1.84	6.68	7.21	15.73	1.62	2.30	14.08	18.00	59.64	71.75	31.79	1,03.54	1873-74.	
1874-75 .	5.95	38.28	6.22	50.45	3.20	19.74	1.61	24.55	59	30	66	1.55	1.74	6.95	6.74	15.43	2.03	3.18	9.77	14.98	13.51	68.45	81.96	25.00	1,06.96	1874-75.
1875-76 .	6.14	38.71	7.63	52.48	3.34	20.11	3.40	26.85	62	42	87	1.91	2.10	7.21	6.92	16.23	1.80	2.31	17.51	21.62	14.00	68.76	82.76	36.33	1,19.09	1875-76.
1876-77 .	6.31	39.89	6.07	43.27	3.92	17.55	52	21.99	70	32	11	1.13	2.82	6.55	4.34	13.71	2.23	2.53	12.40	17.16	15.98	57.84	73.82	23.44	97.26	1876-77.
1877-78 .	7.05	39.19	7.27	53.51	4.37	21.09	49	25.95	1.08	36	18	1.62	2.56	3.85	85	7.26	2.42	2.72	9.30	14.44	17.48	67.21	84.69	18.09	1,02.78	1877-78.
1878-79 .	6.55	31.32	6.59	44.46	4.05	18.70	1.07	23.82	91	25	10	1.26	2.97	4.74	2.05	9.76	3.63	3.34	12.94	19.91	18.11	58.35	76.46	22.75	99.21	1878-79.
1879-80 .	5.92	31.25	4.30	41.47	4.39	15.84	86	21.09	1.49	38	10	1.97	2.64	4.41	2.72	9.77	3.35	3.05	16.89	23.29	17.79	54.93	72.72	24.87	97.59	1879-80.
1880-81 .	6.57	29.00	5.15	40.72	4.15	22.93	77	27.85	2.11	54	10	2.75	2.39	5.28	4.52	12.19	2.34	3.80	18.30	24.44	17.56	61.55	79.11	28.84	1,07.95	1880-81.
1881-82 .	6.72	28.20	7.42	42.34	5.03	20.69	72	26.44	1.89	58	14	2.61	2.42	5.02	3.11	10.55	3.33	3.76	21.67	28.76	19.39	58.25	77.64	33.06	1,10.70	1881-82.
1882-83 .	7.01	...	7.35	14.36	5.12	—105*	62	4.69	1.71	3	25	1.99	2.63	1	2.10	4.74	3.99	3	26.41	30.43	20.46	—98*	19.48	36.73	56.21	1882-83.
1883-84 .	6.95	6	8.99	16.00	5.27	20	52	5.99	1.75	1	20	1.96	2.62	47	2.71	5.40	3.81	8	19.32	23.21	20.40	42	20.82	31.74	52.56	1883-84.

\* The amount refunded is greater than the duty collected.

DEPARTMENT OF FINANCE AND COMMERCE,  
STATISTICAL BRANCH;  
Calcutta, 19th October 1883.

D. BARBOUR,  
Secretary to the Government of India.

## GOVERNMENT OF INDIA.

## REVENUE AND AGRICULTURAL DEPARTMENT.

## REPORTS ON THE STATE OF THE SEASON AND PROSPECTS OF THE CROPS FOR THE WEEK ENDING THE 16th OCTOBER 1883.

GENERAL REMARKS.—Rain continues to fall generally in the Madras Presidency and Mysore, and the condition of the unirrigated crops has much improved. Excessive rain has slightly injured the crops in the Nasik and Ahmednagar districts in the Bombay Presidency; but more rain is wanted for rice in some of the southern districts. The river maintains a low level in Sind where the weather is unusually warm. There has been no rain in Guzerat, but, excepting rice which has failed in parts, the crops there continue to do well. Heavy rain has caused slight damage to the *kharif* in Hyderabad, but the crops there and in the Berars are generally good. There has been little rain in Central India and Rajputana, but the weather is seasonable and prospects fair.

In Burma and Assam the rainfall has been general and favourable, and the rice crop promises well. In Bengal the fall continues light and partial, and, except in the north and east, the later rice crops on high lands have suffered considerably from the break, which is now beginning to affect the crops on the low lands as well. Rain is also needed in parts of the Central Provinces for rice, but prospects are generally favourable. Clear weather has prevailed during the week over the North-Western Provinces and Oudh and Punjab, where rain is much wanted for *rabi* sowings.

Harvesting of *kharif* crops continues in Southern India, and has been nearly completed in the Northern Provinces. *Rabi* operations are also in general progress, except in Bengal, the North-Western Provinces and Oudh, and the Punjab, where they are delayed for want of rain.

Prices are rising in Bengal, fluctuating in the Punjab, and generally stationary elsewhere.

The public health continues fair.

Presidency or Province and District.	Rainfall for week under report.	State of agricultural prospects.
<b>Madras—(Oct. 17th)</b>		
Bellary ...	2.01 (average of five stations).	Standing crops wet, generally good. Dry crops need much more rain. Harvest gingelly in parts, yield below average.
Kurnool ...	2.09 (average of nine stations).	Standing crops fair, but damaged a little by excessive rain. Harvest <i>cholum</i> , <i>sajja</i> , and indigo, yield half to three-fourths. Cattle-disease in five taluks.
Ganjam ...	1.10 (average of nine stations).	Standing crops generally thriving. One death from cholera at Berhampore.
Kistna ...	.94 (average of eight stations).	Standing crops generally good. <i>Cholum</i> in two taluks suffering from grub. <i>Cumboo</i> harvested, yield below half. Small-pox, guinea-worm, and cattle-disease in parts.
Chingleput (Madras) ...	1.20 (average of eleven stations).	Standing crops reviving in three taluks, elsewhere good. Harvest <i>kar</i> , paddy, &c., yield one-fourth. Small-pox and cattle-disease slight in parts.
Coimbatore ...	3.11 (average of sixteen stations).	Standing crops benefited by recent rain. Harvest paddy and dry crops in parts, yield average. Cholera in Karur, 17 deaths. Fever slight in two taluks.
Tanjore ...	1.65 (average of twelve stations).	Standing crops generally good. Harvest paddy, <i>cholum</i> , <i>ragi</i> , <i>cumboo</i> , and <i>varagu</i> , yield below average. Eight deaths from cholera.
Madura ...	1.84 (average of eight stations).	Standing crops fair. Harvest paddy in parts, yield average. Cholera slight in parts of Dindigul taluk.
Malabar ...	2.67 (average of thirteen stations).	Harvesting first crop nearly over. Second crop cultivation progressing in all taluks. Small-pox in nine taluks; fever and cattle-disease slight in parts.
Travancore ...	3.568	Harvesting over. Cultivation progressing. Fever prevails.
<b>Bombay—(Oct. 17th)</b>		
Kurrachee ...	No rain	Weather sultry. River at Kotri on 15th 7 feet 7 inches against 9 feet 11 inches on same date last year. Fever in 10 taluks, cattle-disease in two taluks. Rats doing some damage in Mirpur Botoro and Shahbandar talukas. Harvesting commenced in places. Wheat, red rice, and <i>bajri</i> in Kurrachee 26, 28 and 34, in Kotri 32 and 32, in Tatta 24, 30 and 36, and in Mirpur Botoro 22, 23 and 32 lbs. per rupee, respectively.
Hyderabad ...	.....	<i>Kharif</i> harvesting continues. <i>Rabi</i> operation in progress. River has fallen 1 foot 4 inches since last week and was 2 feet 4 inches lower on 15th instant than on same date last year. Weather unusually hot night and day. Fever in seven, small-pox in three, and cattle-disease in four talukas. Wheat 25, <i>bajri</i> 40, <i>juari</i> 50, red rice 26, and white rice 22 lbs. per rupee.
Ahmedabad ...	.....	Reaping of <i>bajri</i> and <i>juari</i> progressing, other crops healthy. Fever in some talukas. <i>Bajri</i> 28½ and wheat 25 lbs. per rupee.



Presidency or Province and District.	Rainfall for week under report.	State of agricultural prospects.
<b>Bombay—contd.</b>		
Baroda ...	No rain	Slight cholera in Nasari, Gandevi, and Songad mahals; small-pox in Pismagar. Cattle-disease in Harif mahal of Kadi division. Rice crop almost failed in Kadi division. Harvesting of <i>bajri</i> commenced in some places. Prices— <i>bajri</i> 28 and rice 23 lbs. per rupee.
Surat ...	No rain	Cutting of rice, <i>nagli</i> , and grass commenced; other crops healthy. Cattle-disease in Olphad. Cholera in Chikhli 6 cases, 4 deaths, in Bulsar 14 cases, 7 deaths, and in Pardi 65 cases, 16 deaths. Destruction of locusts in Bulsar, Walad and Pardi carried on vigorously. <i>Juari</i> 42 and <i>nagli</i> 43 lbs. per rupee.
Nasik ...	Rain continues with breaks.	Cotton, <i>bajri</i> , <i>urd</i> , and <i>mung</i> have suffered from heavy rain. Locusts doing damage in places. Cholera in Kalwan taluka, 12 attacks, 7 deaths. Cattle-disease in Niphad taluka. <i>Bajri</i> 31, wheat 28, and rice 22 lbs. per rupee.
Colaba (Bombay) ...	Slight rain on 11th; total of week 24.	Total rainfall to date 80.12, being 10.40 above average. Abnormal temperature 0° to 2° warm. Vapour in air excessive, except on 14th when it was defective. Abnormal wind easterly. Thunder and lightning daily, except on 13th.
Poona ...	Rain throughout the district.	<i>Bajri</i> 41 and <i>juari</i> 50 lbs. per rupee, in Poona <i>bajri</i> 34 and <i>juari</i> 43.
Ahmednagar ...	Rain maximum at Nevasa 3.0 and minimum at Rahuri, .08.	Damage caused to the <i>khari</i> crop by excessive and incessant fall of rain is estimated to be on an average about 4 annas; <i>khari</i> crop is being harvested in Parner, Kopergaon, Sangamner, and Akola talukas. Sowing of <i>rabi</i> is in progress throughout the district. Cattle-disease prevails to a slight extent in Kopergaon. Cholera 29 attacks, 16 deaths. <i>Bajri</i> —maximum 57 lbs. in Jankhed, minimum 39 in Sangamner. <i>Juari</i> —maximum 72 in Shrigonda and minimum 51 in Akola.
Sholapur ...	.52	Total rainfall 37.24. <i>Khari</i> in good condition, <i>bajri</i> being reaped in places. Cholera case 1 fatal. <i>Juari</i> 65 and <i>bajri</i> 52 lbs. per rupee.
Dharwar ...	Rain at all stations except Mugud and Nargund; maximum being at Gadag 3.58 and minimum at Dharwar .22; Karajgi, 3.50; Ranibennur, 3.0; Hubli, Navalgund, and Mundargi nearly 2.0; elsewhere less than 1.0.	Crops reviving, but heavy rain required for rice. Cotton sowing almost finished and wheat, gram, and other <i>rabi</i> crops being sown. Slight ague in Dharwar and Hangal, and cattle-disease in three talukas. Prices stationary.
Kanara ...	Karwar, 1.85; Kumpita, 5.23; Sirsi, 1.06; Hallial, 1.32.	Total rainfall 138.40. Small-pox continues in Hanawar and Sidapur. Rice harvest continues on coast. Pepper growing. Common rice in Karwar 12½ seers and in district average 15 seers per rupee.
Rajkot ...	.34	Total rainfall 27.97. General health feverish. Weather very hot and muggy. <i>Bajri</i> 29 and <i>juari</i> 35 lbs. per rupee.
<b>Bengal—(Oct. 17th)</b>		
Chittagong ...	3.16	Weather rather seasonable. Prospects favourable. Rain has done good to standing crops. Prices steady. Cattle-disease ceased.
Dacca ...	1.70	<i>Ashini</i> paddy being harvested; cutting of jute nearly completed; <i>amun</i> blossoming. Prospects good.
24-Pergunnahs (Calcutta) ...	.71	Early crops nearly all harvested. Prospects of rice crop in low lands still favourable. A heavy downpour of rain required. Prices stationary. Health of people generally good.
Moorshedabad ...	.22	Weather hot and sultry, with cool mornings. Paddy is fast drying up from want of rain.
Rajshahye ...	1.41; very slight local showers.	A large part of <i>amun</i> crop lost. Public health fair.
Burdwan ...	.74; Cutwa, .05; Culna, .53.	Rainfall insufficient. Prospects bad. Health fair; a few cases of cholera reported.
Rungpore ...	Nil	Weather hot. Prospects of crops fair, but rain much wanted. Fever prevalent.
Bhagalpur ...	Nil	Prospects not favourable; rice on high lands has suffered much, on low lands it has also suffered. Price of rice has risen. No moisture for <i>rabi</i> sowings.
Purneah ...	Nil	Prospects of rice on high lands damaged by want of rain, rest fair. Rain wanted for <i>rabi</i> ploughing. Common rice 18 seers per rupee with rising tendency. Fever prevails.
Patna ...	Nil	Paddy much suffering for want of rain. Reaping of <i>bhadai</i> crops well nigh completed; sugarcane and cotton promising still. Cholera still reported from Behar sub-division.
Durbhunga ...	Nil	Weather very hot. Prospects are alarming; for want of rain crops must suffer seriously. Prices rising.
Hazaribagh ...	Nil	Weather warm and seasonable. Crops already suffered a great deal for want of rain. Outturn will be poor this year. Prices of food-grains rising gradually. Public health good.



Presidency or Province and District.	Rainfall for week under report.	State of agricultural prospects.
<b>Bengal—contd.</b>		
Cuttack ...	41	Early rice being reaped; late rice doing well, but wants more rain. Price of rice has risen slightly. Public health good. Scattered cases of cholera in and around the town of Kendrapara. <i>General Remarks.</i> —There has been slight rain in some parts of Bengal Proper and Orissa during the week; it has been of no appreciable benefit to the rice crop which has begun to suffer even in the low lands; in the high lands the crop is said to have already suffered a great deal in several places. Prospects, however, are good in some parts of Northern and Eastern Bengal, where there has been sufficient rainfall. <i>Rabi</i> sowings also are being everywhere delayed for want of moisture in the soil in several districts. Prices show a marked tendency to rise owing to the unfavourable prospects of the rice crop. General health of the province is pretty fair, though fever is prevalent in some districts.
<b>N. W. Provinces and Oudh—</b>		
Benares (Oct. 16th)	No rain	Both <i>rabi</i> and <i>kharif</i> crops will suffer. Rain is urgently wanted for <i>rabi</i> sowings. Fever continues. Prices rising slightly.
Allahabad ( „ 17th)	.....	Weather light and fine; nights getting cooler. Rain much required for <i>rabi</i> sowings and for the <i>juari</i> and late rice. Health good. Prices mostly unchanged.
Gorakhpur ( „ 14th)	No rain	<i>Rabi</i> sowings in progress. Cholera decreasing. Prices steady.
Jhansi ( „ 15th)	No rain	The <i>rabi</i> crops will suffer from want of rain and in some places the <i>kharif</i> , e.g., those on <i>rakar</i> soil in parganas Jhansi and Moth. Water in tanks and most wells deficient. Prices pretty steady. Health of people good. Little or no cattle-disease.
Agra ( „ 16th)	No rain	<i>Kharif</i> crops continue to dry up; <i>bajri</i> being cut. Fever in three parganas. Prices almost stationary.
Bareilly ( „ „ )	.....	Rain wanted. Rice has suffered. Health good. Prices stationary. Barley has fallen.
Meerut ( „ „ )	No rain	Ploughing for <i>rabi</i> progressing; gram and peas being sown. Health good. Prices steady.
Kumaun ( „ „ )	.....	Weather fair. <i>Kharif</i> crops all cut; ploughing for <i>rabi</i> has commenced. General health good. Cattle-disease continues. Prices slightly fallen.
Lucknow ( „ „ )	No rain	Weather clear. Gram, wheat, peas, &c., are being sown. Rain wanted very much for the <i>hawal</i> crops. Condition of people and cattle good. Markets well supplied. Prices steady.
Partabgarh ( „ „ )	No rain	<i>Moth</i> , <i>jarkan</i> , <i>bajri</i> , and <i>juari</i> have suffered from the drought. Gram and peas being sown. General health good. Prices rising.
Sitapur ( „ „ )	.....	Gram, peas, and wheat sowing progressing. Prices fluctuating, but with downward tendency.
Fyzabad ( „ „ )	No rain	<i>Kharif</i> crops nearly cut; sowing of wheat and peas commenced. Public health good.
Rae Bareilly ( „ 15th)	No rain	Wind westerly. <i>Juari</i> , <i>moth</i> , and <i>urd</i> begun to suffer for want of rain; <i>dhan</i> being irrigated. General health good. Supplies abundant. Prices steady.
Cawnpore ( „ 16th)	.....	Cloudless weather. Harvesting of <i>kharif</i> crops in progress and preparation for <i>rabi</i> sowings. <i>Juari</i> on high land is suffering from drought. Fever and cholera abating. Cattle-disease reported last week continues. Slight fall in prices.
Farukhabad ( „ „ )	.....	Weather clear and seasonable. Fever on the decrease, otherwise health good. Crops fairly promising, but owing to scanty dew and want of later rains, lighter and dry soils will not yield as well as was expected. <i>General Remarks.</i> —The <i>kharif</i> harvest is progressing or finished, some loss has been caused by want of rain, but the outturn generally is not complained of. Rain is much wanted for the <i>rabi</i> sowings; none has fallen during the week. Fever and cholera are abating. The public health is good, and the markets are well supplied.
<b>Punjab—(Oct. 17th)</b>		
Delhi ...	.....	Health good. Rain wanted. Prices falling.
Hissar ...	.....	Health good. Rain much wanted, especially in Rohtak district. Prices stationary.
Umballa ...	.....	Health good. <i>Kharif</i> harvest nearly completed. Yield expected to be below average. Rain much wanted for <i>rabi</i> sowings. Prices stationary.
Jullundur ...	.....	Health good. <i>Rabi</i> sowings commenced. Rain wanted. Prices falling.
Amritsar ...	.....	Health and condition of crops good. Rain wanted. Prices rising slightly.
Sialkot ...	.....	Health and harvest prospects good. Prices stationary.
Ferozepore ...	.....	Health and harvest prospects good. Prices rising slightly.
Lahore ...	.....	Health good. Prospects much improved. Prices steady.
Rawal Pindi ...	Slight rain	Seasonal fever in Rawal Pindi and Attock tahsils; otherwise health good. <i>Kharif</i> prospects average. Prices falling slightly.
Mooltan ...	.....	Health good. <i>Kharif</i> being harvested. Prices fluctuating.
Dera Ismail Khan ...	.....	Health good. <i>Rabi</i> ploughings in progress. Prices rising.
Peshawar ...	.....	Rain wanted for <i>rabi</i> sowings. Slight fever prevalent. Prices falling. <i>General Remarks.</i> —The health and harvest prospects of the province are generally good, though rain is much wanted in some districts.

Presidency or Province and District.	Rainfall for week under report.	State of agricultural prospects.
<b>Central Provinces—</b> (Oct. 17th)		
Nagpur ...	.....	Weather cloudy. <i>Rabi</i> sowings progressing. Health good. Prices steady.
Jubbulpore ..	75	Weather cloudy at times. Crops in fair condition; rice on sandy soil suffering from want of moisture; cotton promising; <i>rabi</i> sowings commenced. Wheat 22 and rice 14 seers per rupee. Health good.
Saugor (Oct. 16th) .....	.....	Weather occasionally cloudy. Cotton and other crops favourable; <i>rabi</i> sowings progressing. Health good. Prices stationary.
Seoni ...	03	Weather cloudy and warm. <i>Rabi</i> sowings progressing. Fever prevalent. Prices slightly fallen.
Hoshangabad ...	.....	Weather hot. <i>Kharif</i> crops good; <i>rabi</i> sowings commenced. Health good. Wheat 15 and rice 10 seers per rupee.
Khajdwa ...	04	Weather clear. Twelve deaths from cholera. Prices steady.
Raipur ..	75	More rain wanted for both <i>rabi</i> and <i>kharif</i> ; mung, linseed, and castor being sown. Cholera decreasing. Prices steady.
Sambalpur (Oct. 13th) .....	.....	Weather favourable with indications of rain which is necessary for the late rice crops. Health good. Common rice 34 seers per rupee.
<i>General Remarks.</i> —Prospects continue favourable. Sowings of linseed and grain in progress.		
<b>British Burma—</b> (Oct. 13th)		
Akyab ...	3 07	Total rainfall 179.57. One death from cholera in Rathandoung otherwise public health good. 74 deaths of cattle in two townships, elsewhere health of cattle good. General appearance of crops good. Season favourable.
Rangoon ...	1 03	Total rainfall 76.36. One death from small-pox, otherwise public health good. Price of paddy Rs. 79 to 105 per 100 baskets.
Bassoon ...	2 72	Total rainfall 86.43. Public health good. 24 deaths of cattle. Condition of crops satisfactory except in Thabeung, Kyaukpaw, and Southern townships, where water has been too high, and paddy is partially spoiled. Price of paddy Rs. 90 to 100 per 100 baskets.
Amherst (Moulmein) ...	0 78	Total rainfall 164.05. Public health and health of cattle good. Crops reported healthy. In Moulmein town public health and health of cattle good. Crops healthy.
Toungoo ...	1 50	Total rainfall 77.44. Public health good. Price of paddy Rs. 65 per 100 baskets.
Kyaukpaw ...	1 99	Total rainfall 156.08. Public health and health of cattle good. No alteration in prices of paddy.
Sandoway ...	3 6	Total rainfall 206.49. One death from cholera in Northern township, 9 in Letwetshe, 3 in Letwanoek, 2 in Dading circle, Central township. Crops continue healthy.
Hanthawaddy ...	...	Public health and health of cattle good. Ploughing progressing in Hlang township, ploughing completed in Hinawitwante and Tamanaing townships. Wages of ploughing labour 60 baskets of paddy per man in Hlang township. Price of paddy from Rs. 90 to 100 per 100 baskets.
Pegu (Oct. 6th) ...	2 40	Total rainfall 117.01. Public health good. Slight cattle-disease in Zainganaing and Kadouba circles, otherwise health of cattle good. Crops promising in Syriang division and better than last year. Price of paddy Rs. 80 to 95 per 100 baskets.
Do. " 13th) ...	1 82	Total rainfall 118.83. Public health and health of cattle good. Crops promising. Prices of paddy unchanged.
Tharrawaddy ...	...	No report received.
Prome ..	4 38	Total rainfall 45.62. Public health good. A few cases of cattle-disease still reported from Padoung township, but the number of deaths is small. Ploughing and planting progressing. Crops in good condition.
Thonegwa ...	2 43	Total rainfall 82.64. Public health and health of cattle good. Re-planting still going on in Shweeoung township. About 2000 acres in Zandoon township damaged by floods, but replanting continues. The third and last rise of the river has commenced, not so high as last rise as yet. Slight damage to crops by insects in Wakamah circle, Dedayi township. Agricultural prospects in other townships good. Price of paddy Rs. 80 to 100 per 100 baskets.
Henzada ...	9 76	Total rainfall 80.28. One death from small-pox in Henzada township, otherwise public health good. Health of cattle good. General appearance of crops good.
Thayetmye ...	9 52	Total rainfall 39.76. Public health good. Crops promising. Price of paddy Rs. 100 per 100 baskets.
Shwaygyia ...	3 59	Total rainfall 137.24. Four deaths from small-pox in Yelacoond, otherwise public health good. Ten deaths of cattle in Kyaukhmanaw circle. Crops slightly damaged by floods in Kawkamah circle, otherwise progressing favourably.
Tawoy ...	4 93	Total rainfall 190.36. Public health and health of cattle good. Prospects of crops good.

Presidency or Province and District.	Rainfall for week under report.	State of agricultural prospects.
<b>British Burma—contd.</b>		
<b>Mergui (Oct. 6th)</b>	7 80	Total rainfall 156·80. Public health good. Cattle and crops healthy. 34,700 acres ploughed and sown. Prices of paddy Rs. 90 per 100 baskets. <i>General Remarks.</i> —Public health good, except in Akyab. Mortality among cattle appears to be decidedly on the decrease. Rainfall up to date all over the province is considerably less than last year, but agricultural prospects reported in favourably. Area under cultivation in some districts reported larger than last year, and crops said to be in good condition. The heavy rainfall for the week in Thavetmye has partially revived the crops, and given promise of a better harvest than was anticipated before. Prices of paddy continues steady with an upward tendency owing to a rise in the home market.
<b>Assam—(Oct. 17th)</b>		
Gauhati ...	0·2	Weather reasonable. Mornings slightly foggy. Nights cool. Public health fair. Land being ploughed for mustard. <i>Salt</i> paddy coming up well. Prospects good.
Silhet ..	2 13	State and prospects of crops good. Public health also good.
Cachar ...	3 48	Weather warm. Reaping of <i>aus</i> crops nearly finished. Prospect of <i>salt</i> crops good. Ploughing for winter crops commenced. Common rice 17½ sats per rupi. Public health good.
Dibrugarh ..	2 16	Weather rainy. Prospects of crops good. Public health good.
<b>Mysore and Coorg—(Oct. 17th)</b>		
Bangalore ..	7 01	Crops in good condition. Prospects favourable.
Mysore ..	6 28	Weather favourable. Crops in good condition.
Mercara ...	4 57	Heavy showers daily. Coffee berries well matured. Cardamoms are being picked. <i>Ragi</i> crop in East Coorg being harvested.
		<i>General Remarks.</i> Rain has fallen throughout the province. Crops considerably improved. Prospects favourable. Health good. Prices satisfactory. Bangalore in 10½ <i>ragi</i> 3½, and horse gram 2½ sats per rupi. In the province average—rice 16, <i>ragi</i> and horse gram 28 sats per rupi.
<b>Berar &amp; Hyderabad—(Oct. 17th)</b>		
Amraoti ...	·37	Crops in good condition. <i>Rabi</i> sowings commenced. Wheat 16 and <i>guar</i> 26 sats per rupi.
Akola ...	·52	Crops in good condition. Preparations for <i>rabi</i> sowings progressing.
Hyderabad ...	0·7	Total from 1st January 28·95. Standing crops prospering except in one taluka where excessive rain has slightly damaged some of the <i>kharif</i> crops. Chikara still prevails in a mitigated form. Prices—wheat 15½, coarse rice 11, white <i>guar</i> 23, yellow <i>guar</i> 27½, and <i>tur</i> 23½ sats per current <i>saca</i> rupi.
<b>Central India States—(Oct. 17th)</b>		
Indore ..	20	Evenings and mornings are cooler and the cold weather is setting in, though clouds occasionally collect. Health good. Prices slightly falling. Agricultural prospects good at present.
Morar (Gwalior) ..	Nil	Health and prospects good.
Butna ...	.....	Weather clear and hot. Rain required for <i>rabi</i> sowing. Health good.
Rutlam ..		No report received.
Neemuch ..	1 34	Weather reasonable. Health and prospects good.
Goona ..	Nil	Health and prospects good.
Bhopal ...		No report received.
Agar ..	Nil	Agricultural prospects satisfactory. Health good.
Sehore ..	Nil	Weather fair. Prospects and public health good.
Nowgong ..	Nil	Rain wanted for <i>rabi</i> sowing. <i>Kharif</i> prospects fair. Public health good. Prices steady.
Manpur (Bhopawar)	3 10	Prospects good.
<b>Rajputana—</b>		
Abu (Oct. 17th)	No rain	Weather rather cloudy, cool and reasonable.
Sirohi ( " 13th)	No rain	Condition of tanks and wells good. Health and crop prospects good.
Marwar ( " 12th)	Rain reported from districts though not general.	Weather fine and warm.
Meywar ( " 13th)	.....	Eight months water in Jodhpore city. Tanks and wells are filling up. Health good. Crop prospects good. Weather cloudy and close. Prices stationary.
Haroti ( " " )	Shahpura, 109, elsewhere nil.	Tanks and wells full. Health a little fair. Crop prospects good.
Jhallawar ( " 12th)	Thunder and showers	Weather favourable for sowing spring crops.
Ajmere ( " 16th)	No rain	Health and prospects good.
Jeypore ( " 16th)	Slight rain	Prospects fair. Health good.
Bhurlpore (Oct. 16th)	No rain	Weather reasonable. <i>Kharif</i> harvesting commenced. Outturn below average. <i>Rabi</i> sowing in progress. Prices steady. Health fair.
Ulwur (Oct. 16th)	No rain	No report received.
		Prices rising, <i>bajri</i> 20, <i>guar</i> 23, and gram 23 lbs. per rupee. Health good. Fever reported in three taluks.



## No. 103Met.

*Extract from the Proceedings of the Government of India, Revenue and Agricultural Department (Meteorology),—under date Simla, 19th October 1883.*

READ the following :—

Memorandum of the Chief Weather Characteristics in the month of September 1883 in India,—dated 6th October 1883.

It was noticed in the last monthly report that, towards the close of the month of August, an important change in the weather took place; that the drought which had prevailed over North-Western and Central India for about a month had come to end; damp rainy weather had set in over the North-Western Provinces, Central Provinces, and Bombay; and, quite at the close of the month, had reached the extreme north of the Punjab. This weather lasted far into September, the rainfall in the Punjab, Rajputana, and the Central Provinces being so copious as to raise the total fall of the month considerably above the normal average; and, in a measure, to compensate for the previous deficiency. These conditions did not, however, last beyond the middle of the month; the weather then cleared up; the rains ceased, and the sky became almost clear of cloud.

In Western India, after the constant rain which prevailed so generally at the beginning of the month, the weather showed a decided tendency to clear up; but, about the 22nd, a small cyclonic depression appeared between Bombay and Sholapur, and the month ended, as it began, with daily and rather heavy rain. In Bengal, Assam, and Burma the weather was such as is usual in September, but in the south of the Peninsula it was finer than the average and the rainfall deficient.

In the Punjab there were only ten wet days (September 1—10), but the amount of rain which then fell was so large as to exceed by  $3\frac{1}{2}$  inches the normal average fall of the whole month. The pressure was below the average from the 1st to the 15th, and above it from the latter date till the close of the month; and the humidity varied in the opposite direction, the excess at some stations at the beginning of the month being as much as 40 per cent. of saturation. The usual rise of temperature followed partially on the cessation of the rains; Peshawar, at the close of the period, showing a mean temperature, exceeding the average by  $3^{\circ}$ ; but Sialkot, Lahore, and Delhi, on the other hand, were between  $2^{\circ}$  and  $3^{\circ}$  below it.

In the North-Western Provinces the period during which rain fell was longer, lasting from the 1st to the 18th, but the amounts were not so large, and the total at the close of the month was  $1\frac{1}{2}$  inches deficient. Pressure and humidity varied in the same manner as in the Punjab, and the temperature variations were similar. Towards the close of the period the mean daily temperature at several stations considerably exceeded the average of the whole month; the excess from the 19th to the 30th being  $3\cdot2^{\circ}$  at Bareilly,  $4\cdot2^{\circ}$  at Agra, and  $3\cdot8^{\circ}$  at Jhansi.

Assam had 25 wet days, and the month's rainfall was  $2\frac{1}{2}$  inches more than the average. The date at which the pressure rose above the average was later in this than in the preceding provinces, not occurring until the 20th.

In Bengal, 26 of the 30 days were wet, but the total fall was  $3\frac{1}{2}$  inches below the normal amount. The temperature variations were slight and unimportant.

The Central Provinces, Central India, and Berar had 24 wet days; the rainfall on some occasions being heavy, so that, at the close of the month, the total was 5 inches in excess of the average. The weather was, on the whole, rather cool; a mean deficiency of between  $1^{\circ}$  and  $2^{\circ}$  of temperature being reported generally, and  $3^{\circ}$  at Khandwa.

Over the greater part of Rajputana the rainfall ceased on the 14th, but previously to that date rain had fallen on every day, and at Mount Abu the fall continued until the close of the month. Here also the temperature was below the average, the deficiency at Ajmere being 3°.

In Sind and Gujarat rain fell daily until the 6th; it then ceased for a week; but from the 13th onward occasional showers occurred at intervals. The total number of rainy days was 11, and the fall was about the average.

In Bombay there were 25 wet days. Rain fell daily during the first fortnight; it then almost entirely ceased, while the humidity of the atmosphere fell considerably below the average, but about the 23rd the air became much damper; rain recommenced and fell on each day till the end of the month. The total amount was 1 inch above the average, while the temperature was between 1° and 4° below it.

In the south and west of the Peninsula and in Ceylon the month's rainfall was deficient; in the latter region there were only 7, and in the former 15 wet days.

On the Coromandel Coast there were only 10 wet days; the rainfall was 3 inches less than the average, and the temperature was high almost throughout.

Burma had, as usual, the greatest number of wet days, viz., 28 out of 30, and the total rainfall only varied by an insignificant amount from the average. Both temperature and humidity were deficient.

In those provinces where the rains have apparently ceased, the change occurred—

In the Punjab on the 10th.  
 „ Rajputana on the 14th.  
 „ North-Western Provinces on the 18th.  
 „ Central Provinces on the 25th.

Since the beginning of the season, the rainfall has been in excess at about 33, and deficient at about 59, of the reporting stations; so that, on the whole, it has been decidedly below the average.

W. L. DALLAS,

*Assistant Meteorological Reporter to the  
 Government of India.*

ORDER.—Ordered, that the Memorandum be inserted in the Supplement to the *Gazette of India*.

E. C. BUCK,

*Secretary to the Government of India.*

GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

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ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR  
GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING  
LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE  
ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

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The Council met at Government House, Simla, on Wednesday, the 10th  
October, 1883.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I.,  
G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G.

The Hon'ble W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee  
on the Bill to amend the Cattle-trespass Act, 1871, be taken into consideration.  
He said :—

“The object of this Bill is to enable Local Governments to transfer to local boards and similar authorities certain functions, such as the management of pounds and the like, which under the existing law have to be performed either by the District Magistrate or the Local Government; and also to hand over to local funds under the management of those authorities certain sources of income which are derived from the surplus proceeds of the sale of impounded cattle, and which, under the present Act, have to be applied under the orders of the Local Government to the construction of roads and bridges and other works of public utility. The Select Committee to which the Bill was referred have made the measure somewhat more elastic by omitting the reference to the specific sections of the Cattle-trespass Act, and thus empowering Local Governments to transfer to local bodies any such functions as might, in the opinion of the Local Government, be appropriately discharged by those local bodies, and also to hand over, not necessarily the whole, but either the whole or any part, of the sources of income to which I have referred. The Bill in this form is in accordance with the provisions to the same effect introduced into the various local self-government measures already passed, or in course of being passed, by this Council, and will remove certain technical difficulties which stand in the way of the Governments of Madras, Bombay and Bengal giving effect to their proposals for the extension of local self-government by means of legislation of their own. These are the only alterations which have been made.”

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill as amended be passed.

The Motion was put and agreed to.



### LAND IMPROVEMENT LOANS BILL.

The Hon'ble MR. QUINTON moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to loans of money for agricultural improvements be taken into consideration. He said:—

“ My Lord, it will be in the recollection of the Council that this Bill was introduced in October last by my friend Mr. Charles Crosthwaite, and that on that occasion, and at a subsequent meeting of the Council when the Bill was referred to a Select Committee, observations were made by the mover, by the Hon'ble Major Baring and by the Hon'ble Sir Stewart Bayley on the subject of agricultural banks, which attracted much attention and excited much public interest. The intention then was to legislate in this Bill for the promotion of the application, not merely of State loans, but also of private capital to the improvement of land; but, on closer enquiry, the latter was found to be a question of so wide a nature, and of such great importance, and to be attended with so many difficulties of detail, as to demand for its introduction a separate measure, instead of being brought in, as it were by a side wind, in a Bill of which it was not the main object.

“ My hon'ble friends of the Executive Council who may speak after me will, no doubt, explain that the subject of agricultural banks has not been laid aside, and that it has been omitted from the present Bill solely on account of its importance and magnitude.

“ This measure is accordingly one of a simpler character than that originally introduced, and is meant merely to consolidate and amend the law relating to loans of money *by the Government* for agricultural improvements.

“ The necessity for amending the present law, which is contained in Acts XXVI of 1874 and XXI of 1876, was forcibly pointed out by the Famine Commission. As a protection against famine, no measures can be more effective than successful undertakings to improve permanently the productive powers of the soil; and, among such undertakings, the construction of wells, tanks and other works for the storage, supply and distribution of water has in all ages in India been regarded with approbation, and fitfully prosecuted, alike by the people and their rulers. The artificial lakes of Bundelkhand and Central India, the large tanks found all over the Madras Presidency, the inundation-canal of the Western Panjab and the Madras Delta, are monuments of the anxiety of the Government of the day to counteract the disastrous effects of the failure of the periodical rainfall on which Indian agriculture is so dependent; and the Ganges, the Eastern and Western Jumna, and the Orissa canals, the anicuts and distribution-channels of the Godavari and Krishna, and on the Bombay side Lake Tifa and the Ekrak and Ashti tanks testify that the British Government has not lagged behind its predecessors in efforts to protect its subjects from the ravages of famine. But the field is too vast to be completely covered by the exertions of any Government, however powerful, and it has always been the policy of the Government of India to encourage the people themselves to execute smaller protective works by giving them advances for that purpose from the public treasury.

“ To give legal effect to this policy, which had previously been carried out on the authority of the Executive Government, was the object of the enactments to which I have just referred; but unfortunately their provisions, when put in practice, were found to be either defective on the one hand, or too stringent on the other, and they failed consequently to realise the intentions of their framers. The Famine Commission enumerated several obstacles to their successful operation, the reports received from Local Governments and their officers on this Bill allude to others, and contain many valuable suggestions, and a committee of experienced Revenue officials considered the whole subject in Calcutta last cold weather, and reported on it to the Revenue and Agricultural Department of the Government of India. The information derived from these different sources has been carefully weighed and sifted by the Select Committee; and I shall now proceed to state briefly to the Council the alterations we pro-

pose in the existing law, and some of the reasons which have induced us to adopt them.

"Before doing so I may premise that the Select Committee were unable to accept a recommendation of the North-Western Provinces Board of Revenue to amalgamate with the present Bill the Northern India Takṣāví Act. That Act gives power to the Local Government to make advances to the owners and occupiers of arable land for the relief of distress, for the purchase of seed or cattle and other like purposes. Its object is quite distinct from that of the present Bill. It is intended to secure Government from loss in making advances for the relief of temporary distress, whereas the Bill now before us is meant to promote the lasting improvement of the productive powers of the soil. The Northern India Takṣāví Act requires for its application in each case but little preliminary enquiry, and the loans made under it are petty and are generally recovered within the year; whereas in any system of loans for land-improvement the enquiries must of necessity be more tedious, the sums advanced will, as a rule, be of far larger amount, and the time fixed for their repayment will be far longer. It would thus be difficult, if not impossible, to frame a single enactment which would admit of both objects, namely, the improvement of the land and the relief of temporary distress, by loans from Government, being carried out to the fullest extent.

"The Northern India Takṣāví Act has been brought into operation with conspicuous success in parts of the North-Western Provinces and Oudh. By means of it, the vigorous and intelligent exertions of my friends Messrs. M. Conaghey and La Touche have effected the reclamation of extensive tracts of land rendered barren by kans grass in the Banda district; and in the Rae Bareilly district in 1880, my friends Messrs. Arthur Harrington and Bennett, by making liberal advances for the construction of temporary wells and the purchase of plough-cattle and seed, were able to save thousands of cultivators from penury, if not from famine.

"We considered it altogether inexpedient to endanger the successful working of an Act under which such beneficent results have been attained by amalgamating it with one intended to effect a different object, and we declined to seek for legislative symmetry at the risk of practical failure.

"I now turn to the provisions of the Bill.

"By section 4 we authorise Government to advance money for the purpose of making improvements on land to any person having a right to make those improvements, or, with the consent of that person, to any other person; but we do not attempt to define what persons have the right to make the improvements. We empower no person, who has not the right already, to injure another by making an improvement which might alter the extent of their respective interests in the holdings. It has been objected that we enable tenants to make improvements without the consent of their landlords, but this is exactly what we carefully avoid doing. Whether a tenant can make an improvement with or without his landlord's consent is a question to be settled by the law of landlord and tenant in different provinces. In the Central Provinces, the respective rights of the two parties on this subject have been explicitly laid down in the Act recently passed here; in the Bengal Tenancy Bill, now pending before Council, the same point is provided for; and in the North-Western Provinces I believe I am correct in saying that custom recognises the right of certain classes of tenants to make such improvements. In no province is the law in force on the point, whatever it may be, in any wise altered by the Bill.

"In section 4 we also define what we mean by improvements. The list is substantially identical with that contained in the present law; but, in order to provide for works which might be called for by the circumstances of one province and not of another, we enable Local Governments, with the sanction of the Governor General in Council, to bring under the category any other works of a like nature. Vats for agricultural purposes, farm-buildings, planting topes, channels, preservation of the soil on ridges and slopes, and in the villages

of hilly tracts, and the prevention of landslips and of the formation of ravines and torrents have all been suggested from different quarters as fit objects for which loans might be advanced.

"By making subject to the sanction of the Governor General in Council the exercise of the power conferred upon Local Governments, we endeavour to guard against hasty action likely to affect private rights.

"One main reason given for the reluctance of agriculturists to avail themselves of the provisions of the present law is the delay in obtaining the loan caused by the elaborate enquiries prescribed by the Act on receipt of the application. By section 5 we leave it optional with the officer to whom the application is made to issue a notice calling for objections. In provinces where a record-of-rights is carefully maintained, and where the rights of the applicants to make improvements are clearly laid down by law, it will rarely be necessary to issue the notice, and much delay in granting the loan will thereby be avoided, but where these favourable conditions do not exist, a slower procedure is inevitable, and notice will issue as a matter of course.

"When questions of title or the like are raised which the officer feels that he cannot satisfactorily dispose of, the parties will be referred for a settlement of their disputes to the Courts of law; and, until such settlement be made, no loan will be granted.

"As explained in the Statement of Objects and Reasons, section 6 prescribes with some detail, following the model of the English Acts on similar subjects, the mode and the period in which the loans shall be repaid. They must be repaid by instalments, in the form of annuity or otherwise, within a period not to exceed 35 years, unless the Local Government and Governor General in Council, having regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by it, think proper to extend it beyond that term. The existing law laid down no period for the repayment of these loans. The practice was to require repayment within a certain number of years, fixed with reference not to the durability of the work but to the amount of the sum borrowed. The result was that small men who had taken loans were compelled to repay principal and interest before they had realized the full benefit of the works for which the loans had been granted, as the amount of the annual instalments was generally out of all proportion to the extent of the annual profits derived from the improvement. It seemed to us, therefore, that the law should clearly indicate the policy to be universally adopted, and show that the object aimed at by the Government of India is not the speedy realization of the loans, but the promotion of improvements on the land.

"I believe I am warranted in saying that the Government of India has no wish to make money out of these transactions, and that, so long as the interests of the general tax-payers are guarded by adequate security for the payment of instalments sufficient to cover risk of loss, the period fixed for the liquidation of the debt may be a long one.

"We were unable to adopt a suggestion, emanating from high Revenue-authorities, that repayment of the principal lent should never be required but that the loan should be commuted into a permanent addition to the land-revenue equivalent to the interest on the sum advanced. This plan, specious though it seems, we found to be open to the fatal objection of mixing up inextricably the affairs of the State in its capacity of capitalist with its business as a landholder, and we believed it impossible to devise a plan which would reconcile borrowers to paying an annuity for ever on account of an improvement the duration of which is necessarily temporary.

"Section 7 is an expansion of the corresponding section of the present law, empowering Government to recover, with interest (which by some unaccountable oversight was omitted from Act XXVI of 1871) and costs,



advances made under this Act from the borrower or his surety, or from the land improved or hypothecated, as if it were an arrear of land-revenue; and we have added a proviso protecting interests in the land which existed before the date of the loan.

"We have further authorised the Collector, on the application of a surety from whom any arrears due by the principal debtor on account of a loan, interest or costs have been realized, to recover in a similar way such sums from the borrower or from the land. This provision is intended to induce persons to come forward readily as sureties.

"In section 8 we have to some extent adopted a suggestion of the Government of Bengal, and provided that the order of an officer granting a loan should be conclusive evidence that the work for which the loan was granted is an improvement, that the person mentioned in the order had, at the date on which the order was made, a right to make the improvement, and that the improvement is one benefiting the land specified. These are points which, so far as Government is concerned, it is not desirable or expedient to have called in question in Courts of law; but we have guarded against injury to private rights by restricting the operation of the provisions to the purposes of this Act only. No one will be able to contest the right of Government to recover a loan taken for an improvement under this Act on the grounds that the work was not an improvement, or that it did not benefit the land, or that the person who made it had no right to do so when once an order has been recorded on these points by the proper officers but as amongst private persons, such disputes may be fought out in the Courts of law notwithstanding the existence of such order.

"Section 9 was framed to meet a wish of the Panjáb Government, with the object of inducing village-communities or joint proprietors to take loans for improvements, such as tanks or embankments, in which they were jointly interested, by enabling them to define conclusively at the time of taking the loan the amounts for which, as among themselves, each should be held liable, without impairing the joint and several liability of the entire body for the debt to Government.

"As explained by Mr. Crosthwaite in the original Statement of Objects and Reasons, everything for which it is not absolutely essential to provide in the body of the Act is left to rules to be framed by the Local Governments with the previous sanction of the Government of India. In an Act of this nature, intended to apply to all India, it is impossible to lay down rules on points such as are enumerated in section 10, which will be equally suitable for every province; and, as the only interests likely to be affected are those of Government, the ordinary objections to giving such extensive powers to Local Governments have no weight. Local Governments have the strongest motives to promote the successful working of the Act, and may safely be left to guard their own interests.

"Section 11 contains a very important innovation on the existing law. It declares generally that the increase in value derived from an improvement made with the aid of a loan granted under this Act shall not be taken into account in revising the land-revenue assessment of the land benefited.

"On this subject the Famine Commissioners wrote :—

"In addition to the difficulties mentioned as arising out of the working of the rules made under the Act (XXVI of 1871), another reason has been prominently alleged for the disinclination of landholders to spend money, whether their own or borrowed, on the improvement of the land, and that is their doubt whether, at the expiration of the term of settlement, they will be allowed to enjoy the whole profits of such an improvement, or whether it will form the occasion for an enhancement of their assessment. In the Panjáb, it is a rule of the revenue-system that the constructors of new wells should be protected for 20 years from enhancement on account of the irrigation thus provided, and that repairers of old wells and diggers of watercourses should be similarly protected for 10 years. In the North-Western Provinces, Oudh and the Central Provinces, no definite rule appears to have been laid down. In Bírār and Madhās, rules have been issued providing that the assessment on lands on which wells or other improvements have been constructed by the owners or occupants at their own cost shall not be enhanced at a future settlement except on the ground of a general revision of the district rates. But these rules

have not the force of law, and in the Bombay Presidency alone has this understanding been embodied in an Act. We think it important that a precise and permanent understanding should be come to on the subject and ratified by law. The landholder should be guaranteed against any enhancement of his assessment for such a period as shall secure to him such a reasonable return on his investment as will encourage the prosecution of improvements.

"As regards the allusion to the North-Western Provinces, I would observe in passing that a rule of the nature indicated has been executively prescribed, but it is indefinite in its terms, and there is reason to believe that it has not been generally or uniformly acted on.

"The section as it left the hands of the Select Committee proposed to go even beyond the recommendation of the Famine Commission, and to exempt from increase of assessment profits arising from improvement effected by the aid of loans taken under this Act, not merely for such periods as would secure to the maker a reasonable return on his investment, but for all time. In those temporarily-settled provinces where cultivation has almost reached its natural limits, this principle might, perhaps, be applied with advantage; but in others where extensive areas are still awaiting reclamation, which can practically yield no return and pay no revenue until irrigated, the enactment of such a hard-and-fast rule would result only in a useless sacrifice of the prospective financial resources of the State. I therefore propose to move the amendment, immediately after the Motion now before us has been disposed of, of which notice has been given, with the view of empowering the Local Governments, with the sanction of the Governor General in Council, to fix, by rule, periods after the expiration of which increase of value arising from the reclamation of waste land, or from the irrigation of land previously assessed at unirrigated rates, may be taken into account in assessing the land-revenue. To all other improvements under the Act, the general principle prescribed will apply. No enhancement of land-revenue will ever be claimed by Government on account of them.

"If the amendment be accepted, the section will then, in the words of the Famine Commission, embody a precise and permanent understanding on the subject, and give to such understanding that legal ratification which is essential to its successful operation.

"This Bill being intended to regulate only transactions to which Government is a party, no place can properly be found in it for a provision corresponding to section 11, as to improvements effected by tenants. Tenants, as well as landlords, have an equitable right to enjoy the fruits of their labour and expenditure, but the legal provisions for securing this object must be sought for in the law of landlord and tenant. In enactments already passed, or now pending before this Council, they have not been overlooked, and the subject has lately engaged the attention of the legislature in England as well as in India.

"Such, my Lord, are the main provisions of the Bill. We have endeavoured to amend the present law by simplifying the procedure on applications, and to give to it greater elasticity by conferring on the Local Governments extended powers of making rules for matters of detail. We have indicated with no uncertain sound the wish of the Government of India that repayment of advances should be made as easy as possible to the borrower consistently with the interests of the general tax-payer, and we have announced in unmistakable terms that Government will not hasten to appropriate, in the shape of enhanced land-revenue, profits arising from improvements effected under this Act. I cannot assure the Council that the passing of the measure will inaugurate a new era of improvements, or give an irresistible impetus to the building of wells. The Indian agriculturist is not a man of enterprise, and inert habits, the growth of centuries, are not altered in a day; but if, under the present Act, with all its imperfections, over a lakh and a half of rupees were expended in the Panjab within three years, if within the same period the expenditure in the North-Western Provinces and Oudh reached nearly 8½ lakhs, the bulk of this being due to the influence with their

people possessed and exercised by the same district officers to whose successful working of the Northern India Takhtavi Act I have already alluded, and if the Opium Department was able to induce its cultivators to take in advances for wells since 1879 no less than Rs. 1,22,600, we may reasonably anticipate that the removal of obstacles which have hampered the operation of Act XXVI of 1871 will not be unfruitful, and that it will be followed by a steady, if not rapid, increase in the number of new works constructed year by year to protect the people from famine by improving the productive powers of the soil throughout the empire."

The Hon'ble SIR STUART BAYLY said:—"There are several points connected with this Bill which, from the point of view of the Revenue and Agricultural Department, are of considerable importance, and, though they have been mostly dwelt upon by my hon'ble friend Mr. Quinton, still there are two or three of them on which I would ask the permission of the Council, to offer some additional remarks. The first of these points relates to the question of loans by private persons or agricultural banks. The reason which led to the introduction in the original Bill of the provision regarding loans for agricultural purposes, made by private persons duly authorised by the Collectors, to be recovered by revenue-process was explained in the three last paragraphs of the Statement of Objects and Reasons, and it was further dwelt upon in my hon'ble friend Mr. Crosthwaite's opening speech and amplified again by myself. Those reasons, briefly put, were, first, the natural dislike of cultivator-borrowers to come to the Government and get their loans exclusively from them. It was explained that where a man has two competitors both offering to lend him money, one of whom can only lend him money for one purpose, and the other for all purposes; where in the one case the procedure was exceedingly complicated, and in the other money was readily available, it is perfectly clear that under such circumstances the borrower will go to the Native money-lender and not to the Government. Another reason was that Government officers are, from the very nature of their duties and from the circumstances under which they carry on those duties, incapable of sufficiently acquainting themselves with the circumstances of the borrower. These two facts seemed to indicate as a natural conclusion that Government, if possible, should let the business be done by private persons, and that, in consideration of private persons or banks taking up this business, and carrying it out on conditions, to be approved by the Government, that Government should give them special facilities for recovering their debts. These were the circumstances which led to the sections being originally introduced into the Bill. The sections were purely skeleton sections, and, as was observed at the time, could lead to nothing without very careful consideration of the details and being thoroughly thrashed out in committee. When the question came to be considered, it was found that it bristled with difficulties of all kinds. There was, first, the difficulty of distinguishing between loans given for one purpose and loans given for other purposes; for obviously, although Government might undertake to recover loans lent for special purposes under special conditions, it was not at all so clear that they might undertake to recover loans given for ordinary transactions. Then objection was taken to giving preference to one kind of loan and one class of creditors over other kinds of loans and other classes of creditors, and considerable doubts were expressed by experienced officers as to the expediency of allowing Revenue-officers to collect those private debts. There was also great difficulty in arranging for the clearing up of prior incumbrances before banks could be induced to advance money on risky business on what the Government considered moderate rates of interest. Still further complication was likely to arise out of the simultaneous or concurrent jurisdiction in regard to identical transactions between the Revenue and Civil Courts. The consideration of all these difficulties led to the general conclusion that it was better not to include legislation for this purpose in the present Bill, but to take the subject up separately and consider it with all its difficulties on its own basis. My hon'ble friend Mr. Quinton has observed that the matter is not done with. As a matter of fact, since Sir Evelyn Baring made his speech in this room about a year ago, the special experiment to which he therein referred in regard to some particular taluqa in



the Dekkhan has been the subject of considerable correspondence with the Bombay Government, and, through that Government in communication with Sir William Wedderburn, committees of capitalists have been induced to consider the experiment. The subject has now been thrashed out; most of the details of it are about to be submitted to the Secretary of State, and, until he has expressed his opinion upon it, no further action will be taken. That is how the case at present stands, and I may mention that the conclusion come to by the Select Committee to not legislate for this particular point had already commended itself to the Secretary of State.

"The next point upon which I have to ask the attention of the Council is, that of the repayment of loans under section 6 of the Bill. My hon'ble friend Mr. Quinton has observed that the section in its present shape is very much amplified from what it stood in the original Bill, and has explained what the object in amplifying it was. Nothing is more noticeable in the correspondence of the Local Governments on the subject than the frequent complaints made that one great obstacle to working the present system is the very short period over which the repayment of loans extended. It is generally from five to ten years, and it varies, not with regard to the nature of the improvement, but with regard to the amount of money spent upon it. The point is one which recommended itself strongly to my hon'ble friend Sir Evelyn Baring, and it was at his request principally that the section is drawn as it is in the Bill and the special reference made to it in the Statement of Objects and Reasons. He wanted it to be understood that the Government have no objection to extending to 30 or 35 years the repayment of loans where necessary; and also, in special cases, in permanent and costly improvements, that it would be a matter for the consideration of the Local Government whether they should not extend the period of repayment beyond the generation that actually borrowed the money and throw some of the burden upon the succeeding generation.

"In connection with this question of the repayment of loans, one important and difficult proposal has been made, and it is one which has the support of some experienced Revenue-officers, among whom I may mention the Secretary to the Government of India in the Revenue and Agricultural Department. That proposal is that the loan should be commuted into a perpetual charge on the land instead of being repaid within a certain term of years, and that it should form a perpetual addition to the rent or revenue, but for present purposes only to the revenue. The proposal has in it certain obvious advantages. I myself think that it would be exceedingly popular, and that it would induce a rapid acceptance of these loans for improvements.

"It would be popular for this reason—that the interest is fixed below that at which a man could borrow from a Native capitalist: he has also the immense advantage and satisfaction that he has never got to repay the loan, and that the burden of it will be thrown upon future generations. There is also another great advantage connected with it and that is that, the security being land, and not personal, not only can Government afford to lend the money at a lower interest, but also you do away with the necessity for collateral security, which is a very serious obstacle to the working of the present system. You only require collateral security where the borrower has not got a transferable interest in his land, but that unfortunately is the case with the great majority of the cultivators in Northern India. There is consequently a good deal to be said for the proposal, and at one time I was rather inclined to support it; but other considerations prevailed, and I found that the objections to it were very serious. It is obviously inapplicable to the permanently-settled districts, to tracts where there is much sub-infeudation, and to tracts where the assessment is made with joint proprietary bodies, village brotherhoods for instance. There is a further objection to it, that it would necessarily lead in the future to great inequality of assessment; for instance, where two men made similar improvements with the same amount of money, the one has repaid his loan and the other has had his loan commuted into a permanent addition to his revenue. In course of time the man who has repaid his loan is assessed, and his assessment will be much

below that of the man whose interest on his loan is added to the revenue. That may be kept in view for a short time, but the inevitable tendency of it would be in the course of time to bring the assessment of the man who has repaid his loan up to the same level as that of the man who is still paying the burden of his interest as an addition to his assessment. But, besides these objections, it was considered by the best authorities that it was economically wrong in principle for Government to mix up this loan business with its reversionary interest in the produce of the soil. The loans should be lent as anybody else would lend money, and all that Government wants to recover is the interest on its own money and sufficient to cover risks and the cost of collection. It was felt that such a proposal is making a permanent addition to the revenue for improvements was scarcely consistent with the particular principle in section 11, which desires to exempt all improvements hereafter from future assessment. There would further be a risk of serious complication in the case of an exhausted improvement. The man who has had his revenue permanently increased in connection with it will very naturally call for a remission, and it would be exceedingly difficult for Government not to grant that remission; in other words, he will borrow money for his failure too cheaply and at the expense of his neighbours. For all these reasons it was determined in Committee that this proposal should not be embodied in the law, and I have quite come to the conclusion that the Committee's decision was correct; I only notice the matter here to show that it has not lightly been cast aside but fully considered.

“Still connected with this question of interest, my hon'ble friend Sir Evelyn Baring had intended to make a few remarks, and as he was not to be here when the Bill was to be considered in Council, he sent me a short note telling me what he intended to say. It was merely to point out that, under the present law, the rate of interest is fixed by rules made by Local Governments with the previous sanction of the Government of India, and that in our new Bill we do not attempt to alter the procedure in any way; that the present rate is a uniform rate of 6½ per cent. which was fixed by the Government in 1877, the Government desiring it to be understood that they did not wish to make any profit by these loans, that the object in fixing the rate of interest was to fix it at such a point as would not only suffice to cover their own interest, but also the cost of collection and secure them from loss; and when that was done that was all they wanted; but if any Local Government thought that these objects could be secured at a lower rate of interest their representations would be considered. That is what Sir Evelyn Baring had to say upon that subject.

“I now come to a still more important question—that of improvements under section 11. My hon'ble friend Mr. Quenton has already given the history of the section and of the proposed amendment which he would make. I may say for myself that I am very pleased to see this amendment; for without it I should have had some difficulty in accepting the section as it stands. Mr. Quenton has already quoted what the Famine Commission have said upon the subject; and there is one other extract I may read to you in conjunction with his remarks. They wrote:—

“In addition to the difficulties mentioned in paragraph 2 of this section as arising out of the working of the rules made under the Act, another reason has been prominently alleged for the disinclination of landowners to spend money, whether their own or borrowed, on the improvement of the land, and that is, their doubt whether at the expiration of a term of settlement they will be allowed to enjoy the whole profits of such an improvement, or whether it will form the occasion for an enhancement of their assessment. In the Panjáb it is a rule of the revenue system that contractors of new wells should be protected for 20 years from enhancement on account of the irrigation thus provided, and that repairers of old wells and diggers of watercourses, should be similarly protected for 10 years. In the North Western Province, Oudh, and the Central Provinces, no definite rule appears to have been laid down. In Bihar and Madras rules have been issued providing that the assessment on lands on which wells or other improvements have been constructed by the owners or occupants at their own cost shall not be enhanced at a future settlement except on the ground of a general revision of the district rates. But these rules have not the force of law, and in the Bombay Presidency alone has this understanding been embodied in an Act. We think it important that a precise and permanent understanding should be come to on the subject and ratified by law. The landowner should be guaranteed against any enhancement of

assessment for such a period as shall secure to him such a reasonable return on his investment as will encourage the prosecution of improvements. It appears to be quite possible to draw up a set of rules defining what the period should be for any locality or any class of cases, so that it may be clearly known, without fear of mistake or danger of retraction and change of view, by every landowner or tenant who executes a permanent improvement on the land, whether he is entitled to the entire profits arising from it, or to a part for ever or for a term of years. We have made a further reference to this subject in the section which treats of wells.

“The question of how far the State could properly intervene directly in the construction of wells in the case of the landlords declining to take advances, or not assenting to the charge for the construction being placed on the land, is not one easily answered. But, notwithstanding the arguments that have been adduced by some experienced officers in the opposite sense, we are not able to satisfy ourselves either that the Government could safely or equitably insist upon the construction of a well on any land at the cost or risk of the owner of that land or its occupier for the time being, or that it would be practicable for the Government under any system which provided for the first construction of wells at its cost, also to undertake their maintenance for all time. Assistance might properly be given by the loan of dredging tools, or of boring tools in countries where rock is likely to be met with; it might also take the form of loans of money, or both loans and supervision. Provision might also be made for meeting all difficulties dependant on complications of tenure or differences of opinion among interested parties, the law being so amended as to provide that where co-proprietors whose land will be benefited by the construction of a well cannot agree, the wish of the majority should override the dissent of the minority. It might also be possible to stimulate well-construction by extending the practice of Bombay and Madras to Upper India so far as to rule that the assessment of land irrigated from a permanent well should not be liable to enhancement on account of the well at any revision of the settlement, provided that the well is kept in efficient repair. But whatever plan be adopted to facilitate well-construction, we can hardly doubt that in some way the landholder must discharge the cost of first construction, with interest thereon in a term of years and thereafter become the sole owner of the well, and be placed in respect to it in exactly the same position as that which he would have occupied if he had made the well himself.”

“The Revenue Department last year in taking up the recommendations of the Famine Commission piece by piece had to consider the whole question. They called upon each Local Government for a statement as to how the law and rules stood in each province. The answers came and the Bombay Government have legislated for it and Madras has provided for it, in its Revenue rules. The Bombay law stands thus. Section 106 of the Bombay Revenue Code is as follows:—

“It shall be lawful for the Governor in Council to direct at any time a fresh revenue-survey or any operation subsidiary thereto, but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of section 102.

“A revised assessment shall be fixed not with reference to improvements made from private capital and resources during the currency of any settlement made under this Act or under Bombay Act I of 1865, but with reference to general considerations of the value of land, whether as to soil or situation, prices of produce or facilities of communication.”

“Then a subsequent section (107) provides:—

“Nothing in the last preceding section shall be held to prevent a revised assessment being fixed—

- “(a) with reference to any improvement effected at the cost of Government, or
- “(b) with reference to the value of any natural advantage when the improvement effected from private capital and resources consists only in having created the means of utilizing such advantage, or
- “(c) with reference to any improvement which is the result only of the ordinary operation of husbandry.”

“The Madras rules are found in the Standing Orders of the Board, I, paragraph 5—

“Collectors of districts in which settlement by the Settlement Department has been completed or is in progress will notify in their Gazettes that the rates will be liable to revision after thirty years' duration. It is to be explained however to the raiyats that if the general rates of a district are altered, the demand will be regulated with reference to the intrinsic quality and position of the land as compared with other land of similar natural soil and situation, and not with reference to any improvement which may have been effected by the raiyats at their own cost.”



“And again in paragraph 8—

“The raiyats should receive the most distinct assurance, that the tax on lands cultivated by means of wells henceforth to be reconstructed by them at their own cost, will never be enhanced, unless on a general revision of the district rates; and that in such revision any modification in the assessment of lands so improved will be irrespective of the increased value conferred upon them by their holders.”

“I need not go into the rule for the other provinces. With the exception of the Panjáb the rules are somewhat indefinite, and I cannot say that they have been very carefully acted upon in all the settlements made hitherto. With these facts before us the question of how the Famine Commissioner's recommendations were to be carried out came to be considered, and a proposal was made to legislate upon the subject. Mr. Crosthwaite was consulted, and he drew out a rough sketch of the lines on which in his opinion legislation ought to be conducted. I will briefly mention those lines because they contained some suggestions of importance. He proposed that improvements made during the currency of existing settlements should be registered. That is a very valuable suggestion. The value of the improvements was to be settled by a committee of arbitrators and registered, together with the improvement and the area covered by it. Then he divided his improvements into two classes, one of which might be specified as quasipermanent improvements and costly; the other more temporary and less costly improvements and partaking of the nature of reclamation. The first class Mr. Crosthwaite proposed to exempt from assessment altogether; the second class he proposed to exempt absolutely for five years, and thereafter to let him recoup his interest, by deducting 6½ per cent. on cost of improvement from the full assessment of the land. These were the lines upon which Mr. Crosthwaite thought that it would be possible to legislate. When the question came up to be discussed, we found that difficulties cropped up at every turn. The first main difficulty was perhaps one of theory; it was in fact to reconcile two conflicting theories—what I may call the English theory and the Indian theory. The English theory has regard to the relation between lessor and lessee, and from this point of view the English theory naturally urges that any increase in the letting value of the land caused by the lessee should be his and benefit him, and that he should get this benefit in the shape either of an increased length of lease on the old terms, or compensation for the unexhausted portion of his improvements. The Indian theory, if I may say so, disregards altogether the relation between lessor and lessee and looks upon Government as a joint proprietor with the landholder, and that Government, as joint proprietor, is by the ancient law and custom of India entitled to a share in the produce of every bit of land. The logical deduction from the English point of view would be that the landholder should have, as a permanency, the full benefit of any increased value caused by his improvement. Even here I think myself that the fact of the landholder in India having a permanent right of occupancy in his land really divides off his position in a very marked way from that of the leaseholder in England whose position is a temporary one. The natural outcome of the Indian point of view is that when the Government as the sleeping shareholder in the land has provided that the improver should receive full interest for his money spent on improvement, and that he has been recouped for his original outlay, thereafter the Government should retain its right to a share in the improved produce of the soil. These two theories no doubt are antagonistic, but I think that it would have been possible to have come to a reasonable compromise upon them. As a matter of fact you will see that Mr. Crosthwaite based his proposals on the Indian theory, but he went far outside that Indian theory when he proposed that permanent improvements of a valuable kind should be exempted for ever. His object in so doing was that he considered that public policy required that we should do all in our power to encourage improvements of this kind rather than look to future increase of revenue. And in this view, as a matter of expediency, I most fully concur. I think that it would have been very possible to arrange the two conflicting theories upon somewhat such terms as these if we had gone on and proceeded to legislate. But there was another difficulty and that was

the difficulty of distinguishing between the two classes of improvements which Mr. Crosthwaite desired to distinguish. It was almost impossible to draw any line or to find any logical terms to cover the distinction which he desired; permanent and temporary would not do, nor perfect and imperfect; and after considering the matter again I have come to the conclusion that our mistake was in looking at the nature of the improvement instead of trying to find the distinction in the condition of the country to be improved. I think that if we had looked rather to the question of complete or incomplete cultivation, by a sparse or full population, we might probably have more easily found the means of logically distinguishing between the two classes than in looking to the nature of the improvement to be effected. However the idea of special legislation upon this point was abandoned, and it was abandoned because it was inextricably mixed up with the very much larger question with regard to the whole principle of re-settlement in Northern India which was at that time under reference to the Secretary of State. In referring that question to the Secretary of State, the Government of India expressed in very general and broad terms its desire that improvements effected by landholders should hereafter be exempted from assessment, and in reply the Secretary of State, in equally general and broad terms, expressed his thorough approval of the principle. The general question, including the special point of assessing improvements, is now under the consideration of the Local Governments. When, therefore, section 11 was introduced in Select Committee I had very great doubts as to whether it ought to be accepted, not because I doubted the principle of it, I quite accepted and most strongly endorse the principle that as a matter of policy we ought as a rule to secure to the improver the full value of his improvement,—but for the reason that the general question was then under the consideration of the Local Governments, and it appeared to me that modifications might have to be made by each Local Government. It was also perfectly obvious that we could not deal with improvements made under this Act with the money borrowed from Government in a different way from improvements made out of private capital, and that whatever we did in the one case would bind us in the other; and it seemed to me that it would be better if we were first to get the Local Governments' opinions and that the matter should be legislated for in regard to improvements as a whole, and not in regard to improvements only on money borrowed from the Government. However my views did not command the assent of the majority and I gave in on that point, but shortly after that, as my hon'ble friend Mr. Quinton has explained, it became obvious that some modification in the broad and general rule we have adopted should be made; and it became specially obvious in regard to the Panjáb. In the Panjáb, in the south-western districts, the condition of things is that there is a very large amount of waste land unoccupied, and a very sparse population: the land in its unirrigated state is of very little value, and in Montgomery for instance, such land is assessed at somewhere about one anna an acre; but as soon as water is brought to it, it can be assessed at 14 annas or one rupee an acre; and it seems monstrously unjust to the general taxpayers of India that the Government of India should give up all further claim to the increased produce of land assessed at one anna an acre when by a very small expenditure that land becomes assessable at one rupee. That would be the effect of section 11 as it stands, and consequently I think that the amendment which my hon'ble friend Mr. Quinton proposes to introduce to that section is a great improvement. The point has a further indirect bearing on the Government revenue for it is not merely in the present that you lose, but, as has been already pointed out, there is this to be considered—when you come to revise your settlement hereafter, the question of improvements made before the passing of this Act must come up. People who have been assessed for improvements made on unirrigated land before the Act was passed would complain that others have not been similarly assessed on improvements made since the Act was passed and the result would be a general levelling down of assessments, and consequent loss of revenue to Government. That would be the effect if it were not for this modification which it is now proposed to put in the Bill. The present practice of the Panjáb Government as has been stated by the Revenue Commissioners is to give an exemption of 20 years and this

apparently carries out the principle which I have explained that the improver should get back the cost of his improvement and a fair amount of interest. I find it stated that the average cost of sinking a well may be put down at Rs. 300 and the average assessment from which it is exempted is put down at Rs. 18, and twenty times 18 is 360; and so he is enabled fully to recoup his expenditure with at least a portion of interest on it. Obviously to my mind this principle if accurately worked out, is far fairer as regards such lands than would be the broad exemption for ever of all improvements from assessment. I quite admit—in fact I most fully concur—in what Mr. Quinton observed as to districts where the land is fully cultivated and where there is a very small margin of waste and a very full population—where, in other words, it is far more important to improve existing cultivation than to bring additional land under the plough—that there section 11 in its broad application may well stand, and the Government should say ‘improve your lands by all means, we shall never take anything for it.’ But where the position is reversed, where there is much waste land, where improvement is scarcely so much improvement as reclamation, there I think that the Government ought to return in its hands some security, and safeguard its right to share in the future produce of the land. As I have said the proviso which my hon’ble friend Mr. Quinton proposes to introduce as an amendment quite meets my views in regard to this particular Bill and I shall very gladly support it; but it may well be that Local Governments in dealing with the matter in regard to their own provinces, not with reference only to improvements made with Government money but to improvements generally, will see the necessity of adapting the modification in the proviso to the local circumstances of each particular province and they may have to modify the form if not the principle of the proviso.”

HIS EXCELLENCY THE PRESIDENT said :—“I do not wish to detain the Council at any length, but I should like to make one or two observations before this motion is submitted to the Council. The object of the Bill has been very clearly stated by my hon’ble friend, Mr. Quinton. It has been found in practice that the provisions of the Acts upon the subject of loans from Government for land improvement, have not been made use of so largely as was desirable, and have, in certain respects, tended to discourage recourse on the part of landholders and cultivators of the soil to the Government for assistance of this description. My hon’ble friends, Mr. Quinton and Sir Stuart Bayley, have quoted extracts from the report of the Famine Commission, which show how much importance they attached to loans of this sort, and there can be no doubt I think that there are few objects of greater public interest than the encouragement by every possible means of the improvement of land devoted to agricultural purposes.

“The amendments in the existing law proposed in this Bill have all been made with the object of rendering recourse to loans from the Government for land improvement more easy; and removing some, at all events, of the proved obstacles which exist under the present law to the use of such loans.

“I no more than my hon’ble friend, Mr. Quinton, can venture to say whether this Bill, when it becomes law, will lead to a great extension of applications for Government loans. When this measure was first introduced it was I think my hon’ble friend Sir Evelyn Baring—whose loss to this Council every Member, I am confident, deeply regrets—who said that he was not very sanguine as to the practical results that might follow from this measure. Be that as it may, I hope that the greater facilities which this Bill will afford for obtaining these loans will, at all events, tend to encourage applications for them, and to induce the cultivators of the soil to make greater use of the capital of the Government for the improvement of their land.

“I might content myself with these few remarks and put the question at once, but there are one or two points which have been alluded to by previous speakers upon which I should like to say a few words.

“With respect to Agricultural Banks I desire only to say that I hope no one will suppose that by the omission from this Bill of the clauses touching upon



that subject, which were included in the original Bill, the Government imply any intention of abandoning the object which they then had in view. My hon'ble friend Sir Stuart Bayley has stated that that important object is still under the consideration of the Government, and that it is shortly their intention to address the Secretary of State in respect to it. No measure of this kind could be undertaken without the sanction of the Home Government, and I hope that the public will clearly understand that the withdrawal from this Bill of those clauses, imperfect in their nature as they were, does not in the least degree mean that the Government have lost their interest in the question or given up the solution of it as hopeless.

"I now come to the point touched on at some length by Sir Stuart Bayley, namely, that dealt with in the eleventh section of the Bill as it now stands to which Mr. Quinton is about to move an amendment when the present discussion is disposed of. Sir Stuart Bayley has said that he at one time was of opinion that it would have been better to have omitted section 11 altogether from this Bill, and not to have dealt in this measure with this particular subject. I quite admit that section 11 relates only to a portion—in fact only to a small portion—of a much larger question, and that the principles which that section lays down are principles which must have, and ought to have, a much wider application than that which can be given to them under the present Bill. But at the same time I think that the Select Committee acted wisely in not striking out section 11 from this Bill, because I cannot but think that when that section had once been introduced and the Bill published with it, its entire removal would have led to serious misapprehension as to the intentions of Government with regard to the assessment on land improved by the owner or occupier and increased in value by such improvement. I therefore think that it was wise, having once put in the section, to leave it in the Bill, amending it so as to make clear the views of the Government upon the matter with which it deals. With regard to the question of principle I will not detain the Council long, because it is a much larger question than that raised in this particular measure, and it is one on which the Government will have hereafter to express their opinion much more fully; but at the same time, after what has fallen from my hon'ble friend Sir Stuart Bayley, I should like to say a few words as regards my own opinion on this subject. Sir Stuart Bayley has said that there are two theories on this question—the English theory and the Indian theory—and he defined the English theory to be that a tenant who made improvements in the land which he occupied, ought if he were removed from his farm, to receive compensation based upon the addition which his improvement had made to the letting value of the land. I very much wish that I could say that that is the recognised English theory upon this question. It is my own theory unquestionably, and it is a theory which has been partially, and in the end I fear imperfectly, adopted by Parliament at home; but it is a theory only held by a certain number of persons, and there is a wholly antagonistic theory very prevalent among other persons in England, namely, that the tenant should only receive on quitting his holding repayment of the actual outlay he may have made on his improvements.

"For myself as I have said, I entirely hold, in respect to ordinary cultivated land, to the theory which Sir Stuart Bayley has described as the English theory.

"I think that if a tenant, by his own exertion, and the expenditure of his own capital, adds to the letting value of my land, I ought if he leaves his farm to compensate him for the additional letting value of the land of which I am about to take possession. I think that is a perfectly sound and just principle with respect to land under full cultivation because although it is I know said that there are two factors in the results of all improvement, namely, the expenditure of the tenant's capital and labour, and the inherent qualities of the soil, in the case of cultivated land, this second factor should not, as it seems to me, be regarded as constituting an appreciable element in the calculation of the value of a tenant's improvements. For the right to enjoy the results of the inherent qualities

of the soil is already covered by the payment of his ordinary rent, and the addition to the letting value of his land arising from his improvements may therefore be treated as resulting only from his expenditure of capital and labour and may fairly be taken as the measure of the compensation which should be given to him in respect of such improvements when he quits the land.

"Therefore, it appears to me that the principle laid down in section 11 as it stood is a right principle in regard to what I may describe as fully cultivated land, but I admit that the case of what may be broadly called reclamation differs very materially from that of the improvement of land already under full cultivation. In the case of the reclamation of land by a very small expenditure of capital and labour, a very great result may often in a few years be produced. The inherent qualities of the land are the principal factor; the outlay of the occupier is a much more limited factor, and the true mode of dealing with cases of that kind seems to me to be the adoption of what is called in England an improvement lease. The land should be let at a low rent or should be assessed to revenue at a low rate for a certain number of years so that the cultivator may recoup himself for the operations which he carries on in order to bring the waste land under cultivation.

"He should have ample time to fairly repay himself for that expenditure and the rent or revenue, at first very low, should be gradually increased, until at length when the land has been brought into a state of cultivation, it becomes reasonable that the Government or the landowner should step in once for all and place upon the land the full ordinary rates of rent or revenue of similarly cultivated land in the neighbourhood.

"After that has once been done, then any other improvements that the occupier of land may subsequently make ought to fall under the principle laid down in the first portion of section 11, and the person making the improvement should be entitled to reap the full and entire benefit of any addition that he may make to the letting value of the land. That appears to me to be a fair mode of dealing with the question of the reclamation of land, and from the information which I have received, I believe that the case of unirrigated land, especially in the Panjab, and probably also in other parts of India, which is let at unirrigated rates, falls very much into the same category as that of unreclaimed land, because by a very small expenditure of money or labour on the part of the occupier of the soil a very large additional value may be given to the land. Consequently I am quite prepared to admit, as proposed by the amendment of Mr. Quinton, that 'where the improvement consists of the reclamation of waste land, or of the irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Local Government with the approval of the Governor General in Council.' My hon'ble friend, Sir Stuart Buxley, alluded to the difficulty which had been felt in drawing any such distinction as Mr. Crosthwaite originally proposed to draw between different descriptions of improvement. I admit the force of that remark as applied to the particular proposal made by Mr. Crosthwaite, but it appears to me that between improvements on land under full cultivation, and improvements made for the purpose of reclamation of waste land, or for the irrigation of land at present unirrigated, a line may be distinctly drawn which is, in itself, in this country and elsewhere, quite defensible upon grounds of principle. No line of this kind that you can draw can be absolutely satisfactory; there must always be border cases difficult to deal with; but it seems to me that such a line as I have described is easy and simple and rests upon clear and intelligible grounds.

"Under these circumstances I readily agree to the adoption of the amendment which my hon'ble friend, Mr. Quinton, is about to move, and with that alteration it appears to me that section 11 will lay down an important and valuable principle which I hope to see in course of time much more widely adopted.

"I have no more to say at the present moment on this subject. I have every hope that the Bill will make an important improvement in the exist-

ing law, and it will afford me great satisfaction if it should be largely made use of by those for whose benefit it is intended."

The Motion was put and agreed to.

The Hon'ble Mr. QUINTON also moved that, for the proviso to section 11, the following be substituted namely —

"Provided as follows —

"(1) Where the improvement consists of the reclamation of waste-land, or of the irrigation of land assessed at minimum rates the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Local Government with the approval of the Government General in Council.

"(2) Nothing in this section shall entitle any person to call in question any assessment of land-revenue otherwise than as it might have been called in question if this Act had not been passed."

He said that the observations which had fallen from His Excellency the President and from Sir Stuart Bayley on the subject of the amendment relieved him from the necessity of detaining the Council by urging anything in addition to what he had already said in his remarks on the previous motion and was glad that it had obtained such powerful support.

HIS HONOUR THE LIEUTENANT GOVERNOR said that he had intended to offer a few remarks in support of the proposed amendment but much of what he had to say had been anticipated by His Excellency the President and Sir Stuart Bayley. He fully agreed that the principle embodied in section 11 of the Bill as it left the hands of the Select Committee was applicable to districts which were fully developed, in which the margin of waste-land was small, and where the share in the assets of the land had come up to a fair level. But that was not the case in the Punjab. In that province there were vast tracts of land which could be brought under cultivation at very small expense, and any proposal to relieve them from the higher assessment for all time would be a wanton sacrifice of the resources of the State. The whole of our revenue-system in the Punjab had been built up upon the system of what His Excellency the President had described as improvement-leases. Wells, when sunk, were exempted for a period of longer or shorter duration from assessment. After the expiry of 20 years an assessment was taken, and it would never do now to exempt in future all new wells from the higher assessments, because that would at once raise a great diversity of interest between persons who had in years past embarked their capital in the improvement of land and those who were to do so after the passing of this Act. The result would be that the past assessments, which were higher than those imposed on land improved under this Act, would have to be forced down to the level of assessments on unimproved land. The consequence of that would be a loss probably of one third of our assessment. His Honour could not therefore have supported clause 11 of the Bill as it stood, but the proposed amendment removed the objections which he entertained to it, if met the case of the Punjab; it would enable the Punjab to carry on its system as it had hitherto done; and for that reason he was quite prepared to give it his cordial support. But he wished at the same time to point out that, by adopting this provision in the present Bill, the Government was practically pledged in the future not only for improvements executed by loans taken from agricultural banks, but for improvements executed by loans taken from private individuals, and in the expectation that Government would in the future accord equal protection to improvements of both kinds he was prepared to support the present proposals.

The Hon'ble Mr. HOPE said that he wished to express his satisfaction that his hon'ble colleague Mr. Quinton had come forward and moved the amendment which stood in his name, because it appeared to him that that amendment embodied a principle of a most important character, which was indeed to be drawn from the words in which his hon'ble colleague had couched his first clause, but which appeared to him (Mr. HOPE) to be even more clearly and satisfactorily stated in a portion of the extracts from the Bombay Land-revenue Code which his hon'ble colleague Sir Stuart Bayley had read out to the Council. The particular portion he referred to was that in which, after providing that no



assessment should be levied with respect to any improvements made during the currency of a settlement, permission is given to take such improvements into consideration on its revision.—

“With reference to the value of any natural advantage, when the improvement effected from private capital and resources consists only of ~~flowing~~ created the means of utilising such advantage.”

Of course, under the Bombay system, the extent to which a revision should be carried, and the amount of assessment which ought to be imposed, under such circumstances was a question of fact, which would have to be determined in the several individual cases which arose. In some of the more fully cultivated districts, where population was dense and the assessment already heavy, it might even happen that, as the Hon'ble Mr. Quinton had suggested, it might even be judged not worth while to make any increase in the assessment at all, but the right to make such increase must nevertheless be stated in clear and definite terms in the law.

This principle of the assessability of improvements in view of the rights of the landowner was in accordance with the practice which existed throughout the whole of India under the old Native rulers. All civil officers who had had much to do with revenue-assessments were acquainted with hundreds, perhaps thousands, of cases in which they had found wells to have come under assessment, after they had been held, for a certain term of years, exempt from assessment under sanads and other orders by Native Governments. Governments who, he might say, were remarkably shrewd, and whose views in those matters were strikingly in accordance with modern principles of political economy. But this principle was not only in accordance with old custom in India. It was also sound in itself and in accordance with well-recognised principles of political economy. The case was not one of policy, but of mutual rights. If it was reasonable that the occupier of land, whoever he might be, should get a full and fair return for any capital which he might invest in improvements, it was equally reasonable to secure to the owner his rights for any natural advantages which his property might possess, and which had not already been discounted by the rent imposed upon the occupier. There were of course some cases in which the occupier could turn the land, or its mineral resources to other than ordinary uses contemplated in fixing his rent, as where dry crop land was converted by a well into irrigated, but such cases were exceptional, and when they occurred it was just as reasonable, as he had already remarked, that the one party should be protected as the other. It would be as unreasonable to contend that Government was under such circumstances precluded from raising the assessment at a revision, or that a private person was precluded from securing by the provisions of his lease the full advantage to which the mineral or other properties of his land entitled him, as it would be to contend that if a man possessed a building site upon which he did not choose to build a house, or a coal mine which he was unable or disinclined to work, he must therefore allow the free use of that land, or present the working of that coal mine to some one else, without charging ground rent in the one case or royalty in the other.

He had one more remark to make. It would appear that some persons were under an apprehension that a restriction or reservation of right such as that contemplated would act very materially in preventing people from investing their capital in improvements. All that he could say was that no such result had been found to follow from the principle, which was in force throughout the Bombay Presidency. That principle, although it had only lately been embodied in the Bombay Revenue Code, had been recognised in orders there throughout the whole of his period of thirty years' service in India, and he might very easily have come to the Council to-day armed with statistics to show the enormous increase of wells and other improvements of a like nature, involving immense expenditure of money, which the tenants in Bombay under the thirty years' revenue settlements had effected notwithstanding. For his own part he did not feel the slightest apprehension that, if the proposed amendment were adopted